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OF 1987
ANNOTATED**

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 23A 2012 Replacement TITLE 23: PUBLIC UTILITIES AND REGULATED INDUSTRIES (CHAPTERS 30-59)

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Sources

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Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2012 Ark. LEXIS 240 (May 17, 2012) and 2012 Ark. App. LEXIS 466 (May 16, 2012).

Federal Supplement through May 21, 2012.

Federal Reporter 3d Series through May 21, 2012.

United States Supreme Court Reports through May 21, 2012.

Bankruptcy Reporter through May 21, 2012.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

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ALR Fed. 2d through Volume 46, p. 473.


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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.



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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-115 IN VOLUME 24B)

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SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

**CHAPTER 30
GENERAL PROVISIONS**

SECTION.
23-30-101. [Repealed.]

23-30-101. [Repealed.]

Publisher's Notes. This section, defining "bank," was repealed by Acts 1997, No. 89, § 3. The section was derived from Acts 1913, No. 113, § 10; C. & M. Dig., § 674; Acts 1923, No. 627, § 17; Pope's Dig., § 705; A.S.A. 1947, § 67-112; Acts 1987, No. 491, § 2.
For present law, see § 23-45-102.

**CHAPTER 31
STATE BANK DEPARTMENT AND STATE BANKING BOARD**

SECTION.
23-31-101 — 23-31-406. [Repealed.]

23-31-101 — 23-31-406. [Repealed.]

A.C.R.C. Notes. The amendments to §§ 23-31-302 and 23-31-303 by Acts 1997, No. 250, are deemed to be superseded by the repeal of Chapters 30-34 by Acts 1997, No. 89. For the resolution of multiple legislation affecting a section, see §§ 1-2-207 and 1-2-303.

Publisher's Notes. This chapter was repealed by Acts 1997, No. 89, § 3. The chapter was derived from the following sources:

23-31-101. Acts 1981, No. 835, § 1; 1983, No. 730, §§ 1, 2; A.S.A. 1947, §§ 67-420, 67-421.

23-31-201. Acts 1913, No. 113, § 1; C. &

M. Dig., § 665; Acts 1921, No. 496, § 1; Pope's Dig., § 685; A.S.A. 1947, § 67-101.

23-31-202. Acts 1913, No. 113, § 2; C. & M. Dig., § 666; Pope's Dig., § 696; A.S.A. 1947, § 67-102.

23-31-203. Acts 1913, No. 113, § 3; C. & M. Dig., § 667; Pope's Dig., § 697; A.S.A. 1947, § 67-103.

23-31-204. Acts 1913, No. 113, §§ 5, 6; 1917, No. 139, § 14, p. 748; C. & M. Dig., §§ 669, 670, 8693; Acts 1927, No. 46, § 1; Pope's Dig., §§ 699, 701; Acts 1967, No. 178, § 1; 1975, No. 924, § 1; 1981, No. 832, § 1; A.S.A. 1947, §§ 67-105, 67-109.

23-31-205. Acts 1913, No. 113, § 6; C. &

M. Dig., § 670; Pope's Dig., § 699; Acts 1967, No. 178, § 1; 1969, No. 179, § 22; 1975, No. 924, § 1; 1981, No. 832, § 1; 1985, No. 886, §§ 1, 2; A.S.A. 1947, §§ 67-109, 67-109n; Acts 1987, No. 491, § 1.

23-31-206. Acts 1947, No. 397, § 3; 1951, No. 35, §§ 1, 5; A.S.A. 1947, §§ 67-106, 67-106.4.

23-31-207. Acts 1951, No. 35, § 2; 1955, No. 151, § 1; A.S.A. 1947, § 67-106.1.

23-31-208. Acts 1951, No. 35, § 3; 1955, No. 151, § 2; A.S.A. 1947, § 67-106.2.

23-31-209. Acts 1951, No. 35, § 4; 1955, No. 151, § 3; A.S.A. 1947, § 67-106.3.

23-31-210. Acts 1951, No. 35, § 5; A.S.A. 1947, § 67-106.4.

23-31-211. Acts 1955, No. 151, § 4; A.S.A. 1947, § 67-106.6.

23-31-212. Acts 1913, No. 113, § 7; C. & M. Dig., § 671; Pope's Dig., § 702a; A.S.A. 1947, § 67-107.

23-31-213. Acts 1913, No. 113, § 7; C. & M. Dig., § 671; Acts 1929, No. 102, § 5; Pope's Dig., §§ 702a, 761; A.S.A. 1947, §§ 67-107, 67-108.

23-31-214. Acts 1913, No. 113, § 8; C. & M. Dig., § 672; Pope's Dig., § 703; Acts 1947, No. 397, § 3; 1951, No. 35, § 1; A.S.A. 1947, §§ 67-106, 67-110.

23-31-215. Acts 1913, No. 113, § 9; C. & M. Dig., § 673; Pope's Dig., § 704; A.S.A. 1947, § 67-111.

23-31-301. Acts 1933, No. 60, § 6; A.S.A. 1947, § 67-206.

23-31-302. Acts 1933, No. 60, §§ 1, 2, 4; Pope's Dig., §§ 686, 687, 689; Acts 1969, No. 179, § 20; 1983, No. 131, §§ 1-3; 1983, No. 135, §§ 1-3; A.S.A. 1947, §§ 6-623 — 6-625, 67-201, 67-201.1, 67-202, 67-203; Acts 1997, No. 250, § 218.

23-31-303. Acts 1980 (1st Ex. Sess.), No. 3, §§ 1, 2; A.S.A. 1947, §§ 67-201.2, 67-201.3; Acts 1997, No. 250, § 219.

23-31-304. Acts 1933, No. 60, § 5; Pope's Dig., § 690; A.S.A. 1947, § 67-204.

23-31-305. Acts 1933, No. 60, § 3; Pope's Dig., § 688; Acts 1959, No. 465, § 1; 1983, No. 731, § 1; A.S.A. 1947, § 67-205.

23-31-401. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207.

23-31-402. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207.

23-31-403. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207.

23-31-404. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207.

23-31-405. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207; Acts 1991, No. 892, § 2.

23-31-406. Acts 1969, No. 179, § 13; 1973, No. 489, § 1; A.S.A. 1947, § 67-207.

For present law, see Chapter 46 of this title.

CHAPTER 32

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. POWERS AND DUTIES OF FINANCIAL INSTITUTIONS GENERALLY.
3. SURETY BOND EXEMPTION ACT.
4. FOREIGN INVESTOR COMPANIES.
5. AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT.

A.C.R.C. Notes. The amendment of § 23-32-715 by Acts 1997, No. 540, is deemed to be superseded by the repeal of Chapters 30-34 by Acts 1997, No. 89. For the resolution of multiple legislation affecting a section, see §§ 1-2-207 and 1-2-303.

Publisher's Notes. Former Chapter 32, concerning the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, was repealed in its entirety by Acts 1997, No. 89, § 3. The

chapter was derived from the following sources:

23-32-101. Acts 1969, No. 309, § 1; A.S.A. 1947, § 67-358.

23-32-102. Acts 1913, No. 113, [§ 64], as added by Acts 1923, No. 627, § 12; Pope's Dig., § 749; A.S.A. 1947, § 67-321.

23-32-201. Acts 1913, No. 113, § 11; C. & M. Dig., § 675; Pope's Dig., § 706; Acts 1961, No. 223, § 1; A.S.A. 1947, § 67-301; Acts 1991, No. 892, § 1.

23-32-202. Acts 1913, No. 113, § 12; C.

& M. Dig., § 676; Pope's Dig., § 707; A.S.A. 1947, § 67-302.

23-32-203. Acts 1913, No. 113, § 13; 1917, No. 139, § 1; C. & M. Dig., § 677; Acts 1921, No. 496, § 2; 1923, No. 627, § 4; Pope's Dig., § 708; A.S.A. 1947, § 67-303; Acts 1993, No. 1219, § 28.

23-32-204. Acts 1913, No. 113, § 13; 1917, No. 139, § 1; C. & M. Dig., § 677; Acts 1921, No. 496, § 2; 1923, No. 627, § 4; Pope's Dig., § 708; A.S.A. 1947, § 67-303.

23-32-205. Acts 1969, No. 179, § 1; A.S.A. 1947, § 67-303.1.

23-32-206. Acts 1969, No. 179, §§ 2, 3, 10; 1977, No. 639, § 1; A.S.A. 1947, §§ 67-303.2 — 67-303.4.

23-32-207. Acts 1969, No. 179, §§ 11, 12; A.S.A. 1947, §§ 67-303.5, 67-303.6.

23-32-208. Acts 1913, No. 113, § 17; C. & M. Dig., § 681; Acts 1929, No. 102, § 1; 1931, No. 252, § 12; 1933, No. 69, § 1; Pope's Dig., § 825; Acts 1941, No. 104, § 1; 1955, No. 150, § 1; A.S.A. 1947, § 67-307.

23-32-209. Acts 1903, No. 135, § 3, p. 228; C. & M. Dig., § 748; Pope's Dig., § 858; Acts 1947, No. 173, § 1; A.S.A. 1947, § 67-323.

23-32-210. Acts 1913, No. 113, § 18; C. & M. Dig., § 682; Pope's Dig., § 713; Acts 1949, No. 261, § 1; A.S.A. 1947, § 67-308.

23-32-211. Acts 1969, No. 179, § 9; A.S.A. 1947, § 67-308.1.

23-32-212. Acts 1917, No. 139, §§ 8, 9, p. 748; C. & M. Dig., §§ 732, 733; Pope's Dig., §§ 775, 776; A.S.A. 1947, §§ 67-316, 67-317.

23-32-213. Acts 1969, No. 179, § 8; A.S.A. 1947, § 67-307.1.

23-32-214. Acts 1969, No. 179, § 15; A.S.A. 1947, § 67-307.2.

23-32-215. Acts 1965, No. 76, §§ 1-4; 1967, No. 166, § 1; 1968 (1st Ex. Sess.), No. 19, § 1; A.S.A. 1947, §§ 67-353 — 67-356.

23-32-216. Acts 1913, No. 113, § 36; C. & M. Dig., § 702; Pope's Dig., § 728; A.S.A. 1947, § 67-312.

23-32-217. Acts 1933 (1st Ex. Sess.), No. 15, §§ 2, 2A; Pope's Dig., §§ 806, 807; A.S.A. 1947, §§ 67-313, 67-314.

23-32-218. Acts 1935, No. 130, § 1; 1937, No. 325, §§ 1-3; Pope's Dig., §§ 729, 813; A.S.A. 1947, § 67-315.

23-32-219. Acts 1929, No. 102, § 2; Pope's Dig., § 712; Acts 1963, No. 519, § 1; 1969, No. 179, § 23; 1973, No. 512,

§§ 1-3; A.S.A. 1947, §§ 67-309.2 — 67-309.4, 67-318; Acts 1987, No. 491, § 4.

23-32-220. Acts 1969, No. 179, § 4; A.S.A. 1947, § 67-303.7.

23-32-221. Acts 1969, No. 179, § 5; A.S.A. 1947, § 67-303.8.

23-32-222. Acts 1913, No. 113, § 19; C. & M. Dig., § 683; Pope's Dig., § 714; Acts 1965, No. 432, § 1; 1969, No. 179, § 6; 1981, No. 501, § 1; A.S.A. 1947, §§ 67-303.9, 67-309.

23-32-223. Acts 1969, No. 179, § 7; A.S.A. 1947, § 67-303.10.

23-32-224. Acts 1913, No. 113, § 19; C. & M. Dig., § 683; Acts 1921, No. 496, § 12; 1913, No. 113, [§ 63], as added by Acts 1923, No. 627, § 3; Pope's Dig., §§ 714, 744; Acts 1965, No. 432, § 1; 1969, No. 179, §§ 16, 23; 1973, No. 512, § 1; 1981, No. 501, § 1; A.S.A. 1947, §§ 67-309 — 67-309.2, 67-310; Acts 1987, No. 491, §§ 3, 4; 1993, No. 154, § 1; 1993, No. 982, § 1; 1995, No. 80, § 1.

23-32-225. Acts 1913, No. 113, § 19; C. & M. Dig., § 683; Acts 1921, No. 496, § 12; Pope's Dig., § 714; Acts 1965, No. 432, § 1; 1981, No. 501, § 1; A.S.A. 1947, § 67-309; Acts 1987, No. 491, § 3.

23-32-226. Acts 1933, No. 23, § 3; Pope's Dig., § 823; A.S.A. 1947, § 67-311.

23-32-227. Acts 1913, No. 113, §§ 14, 15; C. & M. Dig., §§ 678, 679; Pope's Dig., §§ 709, 710; A.S.A. 1947, §§ 67-304, 67-305.

23-32-228. Acts 1913, No. 113, § 16; C. & M. Dig., § 680; Pope's Dig., § 711; A.S.A. 1947, § 67-306; Acts 1991, No. 892, § 3.

23-32-301. Acts 1983, No. 128, § 2; A.S.A. 1947, § 67-2109.

23-32-302. Acts 1983, No. 128, § 1; A.S.A. 1947, § 67-2108.

23-32-303. Acts 1983, No. 128, § 3; 1983, No. 435, § 1; A.S.A. 1947, § 67-2110; Acts 1988 (4th Ex. Sess.), No. 2, § 3; 1988 (4th Ex. Sess.), No. 12, § 3; 1989, No. 702, § 1; 1995, No. 606, § 1.

23-32-304. Acts 1983, No. 128, § 8; A.S.A. 1947, § 67-2115.

23-32-305. Acts 1983, No. 128, § 9; 1983, No. 435, § 3; A.S.A. 1947, § 67-2116.

23-32-306. Acts 1983, No. 128, § 4; A.S.A. 1947, § 67-2111.

23-32-307. Acts 1983, No. 128, § 7; 1983, No. 435, § 2; A.S.A. 1947, § 67-2114.

- 23-32-308. Acts 1983, No. 128, § 5; A.S.A. 1947, § 67-2112; Acts 1993, No. 187, § 1; 1995, No. 606, § 3.
- 23-32-309. Acts 1983, No. 128, § 6; A.S.A. 1947, § 67-2113.
- 23-32-401. Acts 1939, No. 320, §§ 1, 2; A.S.A. 1947, §§ 67-324, 67-325.
- 23-32-402. Acts 1939, No. 320, § 4; A.S.A. 1947, § 67-327.
- 23-32-403. Acts 1939, No. 320, §§ 3, 5; A.S.A. 1947, §§ 67-326, 67-328.
- 23-32-404. Acts 1939, No. 320, § 6; A.S.A. 1947, § 67-329.
- 23-32-501. Acts 1953, No. 349, § 1; A.S.A. 1947, § 67-330; Acts 1991, No. 339, §§ 1, 2.
- 23-32-502. Acts 1953, No. 349, § 2; 1955, No. 245, § 1; A.S.A. 1947, § 67-331.
- 23-32-503. Acts 1953, No. 349, § 3; 1973, No. 460, § 2; A.S.A. 1947, § 67-332; Acts 1991, No. 339, § 3.
- 23-32-504. Acts 1953, No. 349, § 5; 1973, No. 460, § 3; A.S.A. 1947, § 67-334.
- 23-32-505. Acts 1953, No. 349, § 8; A.S.A. 1947, § 67-337.
- 23-32-506. Acts 1953, No. 349, § 7; 1983, No. 869, § 7; 1985, No. 605, § 1; 1985, No. 995, § 1; A.S.A. 1947, § 67-336; Acts 1987, No. 962, § 1.
- 23-32-507. Acts 1953, No. 349, § 6; A.S.A. 1947, § 67-335.
- 23-32-508. Acts 1953, No. 349, § 10; A.S.A. 1947, § 67-339.
- 23-32-509. Acts 1953, No. 349, § 9; A.S.A. 1947, § 67-338.
- 23-32-601. Acts 1983, No. 869, § 1; A.S.A. 1947, § 67-368.
- 23-32-602. Acts 1983, No. 869, § 3; A.S.A. 1947, § 67-368.2; Acts 1987, No. 962, § 2.
- 23-32-603. Acts 1983, No. 869, § 2; A.S.A. 1947, § 67-368.1; Acts 1987, No. 962, § 2.
- 23-32-604. Acts 1983, No. 869, § 4; A.S.A. 1947, § 67-368.3; Acts 1987, No. 962, § 2.
- 23-32-605. Acts 1953, No. 349, § 7; 1983, No. 869, § 7; 1985, No. 605, § 1; 1985, No. 995, § 1; A.S.A. 1947, § 67-336; Acts 1987, No. 962, § 2.
- 23-32-606. Acts 1983, No. 869, § 5; A.S.A. 1947, § 67-368.4; Acts 1987, No. 962, § 2.
- 23-32-607. Acts 1983, No. 869, § 6; A.S.A. 1947, § 67-368.5; Acts 1987, No. 962, § 2.
- 23-32-701. Acts 1913, No. 113, § 20; C. & M. Dig., § 684; Pope's Dig., § 715; Acts 1969, No. 179, § 17; 1973, No. 319, § 1; 1975, No. 362, § 3; 1985, No. 877, § 1; A.S.A. 1947, §§ 67-501, 67-501.1; Acts 1991, No. 633, § 1; 1993, No. 644, § 1; 1995, No. 400, § 1.
- 23-32-702. Acts 1903, No. 135, § 2, p. 228; C. & M. Dig., § 747; Acts 1923, No. 627, § 10; Pope's Dig., § 857; A.S.A. 1947, § 67-322.
- 23-32-703. Acts 1913, No. 113, § 29; C. & M. Dig., § 695; Pope's Dig., § 722; Acts 1985, No. 605, § 2; 1985, No. 995, § 2; A.S.A. 1947, § 67-502.
- 23-32-704. Acts 1913, No. 113, [§ 65] as added by Acts 1923, No. 627, § 14; Pope's Dig., § 750; A.S.A. 1947, § 67-503.
- 23-32-705. Acts 1913, No. 113, § 34; C. & M. Dig., § 700; Acts 1923, No. 627, § 18; 1931, No. 252, § 11; 1933, No. 23, § 1; Pope's Dig., § 821; A.S.A. 1947, § 67-540.
- 23-32-706. Acts 1955, No. 244, § 1; A.S.A. 1947, § 67-547.
- 23-32-707. Acts 1967, No. 143, §§ 1, 2; A.S.A. 1947, §§ 67-547.1, 67-547.2.
- 23-32-708. Acts 1969, No. 179, § 17; 1985, No. 877, § 1; A.S.A. 1947, § 67-501.1.
- 23-32-709. Acts 1917, No. 139, § 10; C. & M. Dig., § 734; Pope's Dig., § 777; Acts 1985, No. 471, §§ 1, 2; A.S.A. 1947, §§ 67-505, 67-505.1.
- 23-32-710. Acts 1913, No. 113, [§ 69], as added by Acts 1923, No. 627, § 15; Pope's Dig., § 751; Acts 1949, No. 194, §§ 1, 2; A.S.A. 1947, §§ 67-541 — 67-543.
- 23-32-711. Acts 1967, No. 112, § 1; A.S.A. 1947, § 67-553.
- 23-32-712. Acts 1921, No. 465, § 1; Pope's Dig., § 787; Acts 1975, No. 216, § 1; A.S.A. 1947, § 67-516.
- 23-32-713. Acts 1913, No. 113, [§ 66], as added by Acts 1921, No. 496, § 6; Pope's Dig., § 752; A.S.A. 1947, § 67-504.
- 23-32-714. Acts 1985, No. 508, §§ 1-3; A.S.A. 1947, §§ 67-1656 — 67-1658.
- 23-32-715. Acts 1985, No. 507, §§ 1, 2; A.S.A. 1947, §§ 67-1659, 67-1660.
- 23-32-716. Acts 1913, No. 113, [§ 67], as added by Acts 1921, No. 496, § 11; Pope's Dig., § 757; A.S.A. 1947, § 67-522; Acts 1997, No. 540, § 46.
- 23-32-717. Acts 1995, No. 610, §§ 1-3.
- 23-32-801. Acts 1919, No. 339, § 3; C. & M. Dig., § 740; Pope's Dig., § 783; A.S.A. 1947, § 67-320.
- 23-32-802. Acts 1971, No. 186, §§ 1, 2, 4, 5; 1973, No. 318, § 1; 1980 (2nd Ex.

Sess.), No. 8, § 1; 1983, No. 729, §§ 1, 2; A.S.A. 1947, §§ 67-401, 67-401.1, 67-401.3, 67-401.4.

23-32-803. Acts 1913, No. 113, §§ 27, 28; C. & M. Dig., §§ 693, 694; Pope's Dig., §§ 720, 721; A.S.A. 1947, §§ 67-407, 67-408.

23-32-901. Acts 1931, No. 252, §§ 1, 2; Pope's Dig., § 816; Acts 1969, No. 179, § 18; 1977, No. 815, § 1; 1985, No. 837, § 1; A.S.A. 1947, § 67-507.

23-32-902. Acts 1931, No. 252, §§ 1, 2; Pope's Dig., § 816; Acts 1969, No. 179, § 18; 1973, No. 520, § 1; 1975, No. 362, §§ 1, 2; 1981, No. 831, §§ 1, 2; 1985, No. 837, §§ 1, 2; A.S.A. 1947, § 67-507; Acts 1989, No. 500, §§ 1, 2; 1991, No. 893, § 1; 1993, No. 919, § 1.

23-32-903. Acts 1931, No. 252, §§ 1, 2; Pope's Dig., § 816; Acts 1969, No. 179, § 18; A.S.A. 1947, § 67-507.

23-32-904. Acts 1931, No. 252, § 5; 1937, No. 3, § 1; Pope's Dig., § 820; Acts 1943, No. 140, § 1; 1975, No. 216, § 4; A.S.A. 1947, §§ 67-512, 67-513.

23-32-905. Acts 1913, No. 113, § 30; C. & M. Dig., § 696; Acts 1931, No. 252, § 8; Pope's Dig., § 723; A.S.A. 1947, § 67-506; Acts 1987, No. 901, § 1.

23-32-906. Acts 1931, No. 252, § 3; Pope's Dig., § 817; A.S.A. 1947, § 67-509; Acts 1987, No. 789, § 1.

23-32-907. Acts 1931, No. 252, § 6; Pope's Dig., § 819; A.S.A. 1947, § 67-511.

23-32-908. Acts 1977, No. 746, §§ 1, 2; 1983, No. 143, § 1; A.S.A. 1947, §§ 67-556, 67-557; Acts 1988 (3rd Ex. Sess.), No. 30, § 1.

23-32-909. Acts 1955, No. 376, § 1; A.S.A. 1947, § 67-548.

23-32-910. Acts 1935, No. 48, § 1; 1937, No. 138, § 1; Pope's Dig., § 811; A.S.A. 1947, § 67-514.

23-32-911. Acts 1945, No. 36, § 1; 1945, No. 245, § 1; A.S.A. 1947, § 67-515.

23-32-912. Acts 1967, No. 176, § 1; A.S.A. 1947, § 67-554.

23-32-913. Acts 1991, No. 805, § 1.

23-32-1001. Acts 1913, No. 113, § 35; C. & M. Dig., § 701; Pope's Dig., § 727; Acts 1965, No. 421, § 1; A.S.A. 1947, § 67-519.

23-32-1002. Acts 1913, No. 113, § 35; C. & M. Dig., § 701; Pope's Dig., § 727; Acts 1965, No. 421, § 1; A.S.A. 1947, § 67-519.

23-32-1003. Acts 1933, No. 61, § 4; Pope's Dig., § 798; Acts 1941, No. 347, § 1; 1947, No. 396, § 1; A.S.A. 1947, § 67-

524; Acts 1987, No. 769, § 1; 1991, No. 668, § 1; 1992 (1st Ex. Sess.), No. 50, § 1.

23-32-1004. Acts 1965, No. 45, §§ 1-3; 1967, No. 503, § 1; 1981, No. 833, § 1; A.S.A. 1947, §§ 67-549 — 67-551.

23-32-1005. Acts 1965, No. 78, § 1; 1983, No. 843, § 1; A.S.A. 1947, § 67-552.

23-32-1006. Acts 1913, No. 113, [§ 68] as added by Acts 1921, No. 496, § 13; Pope's Dig., § 758; A.S.A. 1947, § 67-523.

23-32-1007. Acts 1973, No. 488, § 1; A.S.A. 1947, § 67-555.

23-32-1008. Acts 1913, No. 113, § 33; C. & M. Dig., § 699; Pope's Dig., § 725; A.S.A. 1947, § 67-536.

23-32-1009. Acts 1933, No. 60, § 7; Pope's Dig., § 691; A.S.A. 1947, § 67-525.

23-32-1010. Acts 1933, No. 96, § 1; Pope's Dig., § 800; A.S.A. 1947, § 67-526.

23-32-1011. Acts 1933, No. 96, § 2; Pope's Dig., § 801; A.S.A. 1947, § 67-527.

23-32-1012. Acts 1933, No. 96, §§ 3, 5; Pope's Dig., §§ 802, 804; A.S.A. 1947, §§ 67-528, 67-530.

23-32-1013. Acts 1933, No. 96, § 4; Pope's Dig., § 803; A.S.A. 1947, § 67-529.

23-32-1014. Acts 1933 (1st Ex. Sess.), No. 15, § 1; Pope's Dig., § 805; A.S.A. 1947, § 67-531.

23-32-1015. Acts 1987, No. 513, §§ 1-6.

23-32-1101. Acts 1913, No. 113, § 40; C. & M. Dig., § 706; Pope's Dig., § 733; A.S.A. 1947, § 67-409.

23-32-1102. Acts 1913, No. 113, §§ 37, 38; C. & M. Dig., §§ 703, 704; Acts 1923, No. 627, § 2; Pope's Dig., §§ 730, 731; A.S.A. 1947, §§ 67-410, 67-411.

23-32-1103. Acts 1913, No. 113, § 39; 1917, No. 139, § 3, p. 748; C. & M. Dig., § 705; Pope's Dig., § 732; Acts 1979, No. 830, § 1; 1981, No. 680, § 1; A.S.A. 1947, § 67-413; Acts 1993, No. 186, § 1.

23-32-1104. Acts 1933, No. 60, § 11; Pope's Dig., § 694; A.S.A. 1947, § 67-418.

23-32-1105. Acts 1917, No. 139, § 13, p. 748; C. & M. Dig., § 737; Pope's Dig., § 780; A.S.A. 1947, § 67-417.

23-32-1106. Acts 1913, No. 113, §§ 39, 42; 1917, No. 139, § 3, p. 748; C. & M. Dig., §§ 705, 708; Pope's Dig., §§ 732, 735; Acts 1979, No. 830, § 1; 1981, No. 680, § 1; A.S.A. 1947, §§ 67-413, 67-414.

23-32-1107. Acts 1919, No. 339, § 2; C. & M. Dig., § 739; Pope's Dig., § 782; Acts 1941, No. 108, § 1; A.S.A. 1947, § 67-419; Acts 1995, No. 467, § 1.

23-32-1108. Acts 1913, No. 113, § 43; C. & M. Dig., § 709; Pope's Dig., § 736; A.S.A. 1947, § 67-415.

23-32-1109. Acts 1913, No. 113, § 39; 1917, No. 139, § 3, p. 748; C. & M. Dig., § 705; Pope's Dig., § 732; Acts 1979, No. 830, § 1; 1981, No. 680, § 1; A.S.A. 1947, § 67-413.

23-32-1110. Acts 1913, No. 113, § 49; 1917, No. 139, § 4, p. 748; C. & M. Dig., § 715; Acts 1929, No. 102, § 3; Pope's Dig., § 760; A.S.A. 1947, § 67-416.

23-32-1111. Acts 1913, No. 113, § 41; C. & M. Dig., § 707; Pope's Dig., § 734; Acts 1979, No. 831, § 1; 1985, No. 604, § 1; A.S.A. 1947, § 67-412; Acts 1995, No. 468, § 1.

23-32-1201. Acts 1973, No. 228, § 1; 1985, No. 607, § 1; A.S.A. 1947, § 67-359; Acts 1987, No. 920, § 1; 1988 (4th Ex. Sess.), No. 2, § 2; 1988 (4th Ex. Sess.), No. 12, § 2; 1995, No. 606, § 2.

23-32-1202. Acts 1973, No. 228, §§ 2, 6; 1983, No. 256, § 1; 1985, No. 103, § 1; A.S.A. 1947, §§ 67-360, 67-364; Acts 1987, No. 539, § 1; 1988 (4th Ex. Sess.), No. 2, § 4; 1988 (4th Ex. Sess.), No. 12, § 4; 1991, No. 892, § 4.

23-32-1203. Acts 1973, No. 228, § 2; 1985, No. 607, § 2; A.S.A. 1947, § 67-360; Acts 1987, No. 920, § 2; 1988 (4th Ex. Sess.), No. 2, § 5; 1988 (4th Ex. Sess.), No. 12, § 5; 1991, No. 892, §§ 5, 6.

23-32-1204. Acts 1973, No. 228, § 3; A.S.A. 1947, § 67-361; Acts 1988 (4th Ex. Sess.), No. 2, § 6; 1988 (4th Ex. Sess.), No. 12, § 6.

23-32-1205. Acts 1973, No. 228, § 5; A.S.A. 1947, § 67-363.

23-32-1206. Acts 1973, No. 228, § 4; A.S.A. 1947, § 67-362.

23-32-1207. Acts 1983, No. 256, § 2; A.S.A. 1947, § 67-360.1.

23-32-1208. Acts 1975, No. 396, § 1; A.S.A. 1947, § 67-366.

23-32-1209. Acts 1973, No. 15, §§ 1, 2; 1985, No. 531, §§ 1, 2; A.S.A. 1947, §§ 67-352.2, 67-352.2n.

23-32-1210. Acts 1989, No. 511, § 1.

23-32-1301. Acts 1977, No. 643, § 1; A.S.A. 1947, § 67-367.

23-32-1302. Acts 1977, No. 643, § 11; A.S.A. 1947, § 67-367.10.

23-32-1303. Acts 1977, No. 643, § 2; A.S.A. 1947, § 67-367.1.

23-32-1304. Acts 1977, No. 643, § 6; A.S.A. 1947, § 67-367.5.

23-32-1305. Acts 1977, No. 643, § 8; A.S.A. 1947, § 67-367.7.

23-32-1306. Acts 1977, No. 643, § 3; A.S.A. 1947, § 67-367.2.

23-32-1307. Acts 1977, No. 643, §§ 4, 5; A.S.A. 1947, §§ 67-367.3, 67-367.4.

23-32-1308. Acts 1977, No. 643, § 10; A.S.A. 1947, § 67-367.9.

23-32-1309. Acts 1977, No. 643, § 7; A.S.A. 1947, § 67-367.6.

23-32-1310. Acts 1977, No. 643, § 9; A.S.A. 1947, § 67-367.8.

23-32-1311. Acts 1995, No. 859, § 1.

23-32-1401. Acts 1981, No. 893, § 2; A.S.A. 1947, § 67-2302.

23-32-1402. Acts 1981, No. 893, § 1; A.S.A. 1947, § 67-2301.

23-32-1403. Acts 1981, No. 893, § 6; A.S.A. 1947, § 67-2306.

23-32-1404. Acts 1981, No. 893, § 3; A.S.A. 1947, § 67-2303.

23-32-1405. Acts 1981, No. 893, § 5; A.S.A. 1947, § 67-2305.

23-32-1406. Acts 1981, No. 893, § 4; A.S.A. 1947, § 67-2304.

23-32-1501. Acts 1955, No. 349, § 1; A.S.A. 1947, § 67-1501.

23-32-1502. Acts 1955, No. 349, § 5; A.S.A. 1947, § 67-1505.

23-32-1503. Acts 1955, No. 349, § 1; 1965, No. 422, § 1; A.S.A. 1947, § 67-1501.

23-32-1504. Acts 1955, No. 349, § 2; 1965, No. 422, § 2; A.S.A. 1947, § 67-1502.

23-32-1505. Acts 1955, No. 349, § 3; A.S.A. 1947, § 67-1503.

23-32-1506. Acts 1955, No. 349, § 4; A.S.A. 1947, § 67-1504.

23-32-1601. Acts 1967, No. 243, § 1; A.S.A. 1947, § 67-2001.

23-32-1602. Acts 1967, No. 243, § 2; A.S.A. 1947, § 67-2002.

23-32-1603. Acts 1967, No. 243, § 3; A.S.A. 1947, § 67-2003.

23-32-1604. Acts 1967, No. 243, § 4; A.S.A. 1947, § 67-2004.

23-32-1605. Acts 1967, No. 243, § 5; A.S.A. 1947, § 67-2005.

23-32-1606. Acts 1967, No. 243, §§ 6, 8; A.S.A. 1947, §§ 67-2006, 67-2008.

23-32-1607. Acts 1967, No. 243, § 7; A.S.A. 1947, § 67-2007.

23-32-1701. Acts 1985, No. 954, § 1.

23-32-1702. Acts 1985, No. 954, § 2.

23-32-1703. Acts 1985, No. 954, § 4.

23-32-1704. Acts 1985, No. 954, § 3.

23-32-1801. Acts 1988 (4th Ex. Sess.), No. 2, § 1; 1988 (4th Ex. Sess.), No. 12, § 1.

23-32-1802. Acts 1988 (4th Ex. Sess.), No. 2, § 1; 1988 (4th Ex. Sess.), No. 12, § 1.

23-32-1803. Acts 1988 (4th Ex. Sess.), No. 2, § 1; 1988 (4th Ex. Sess.), No. 12, § 1; 1991, No. 892, § 7.

23-32-1804. Acts 1988 (4th Ex. Sess.), No. 2, § 1; 1988 (4th Ex. Sess.), No. 12, § 1.

23-32-1805. Acts 1988 (4th Ex. Sess.), No. 2, § 1; 1988 (4th Ex. Sess.), No. 12, § 2.

23-32-1901. Acts 1989, No. 195, § 1.

23-32-1902. Acts 1989, No. 195, § 2; 1995, No. 1322, § 1.

23-32-1903. Acts 1989, No. 195, § 3; 1995, No. 1322, § 2.

23-32-1904. Acts 1989, No. 195, § 4; 1995, No. 1322, § 3.

23-32-1905. Acts 1989, No. 195, § 5; 1995, No. 1322, § 4.

23-32-1906. Acts 1989, No. 195, § 6; 1995, No. 1322, § 5.

23-32-1907. Acts 1989, No. 195, § 7; 1995, No. 1322, § 6.

23-32-1908. Acts 1989, No. 195, § 8; 1995, No. 1322, § 7.

23-32-1909. Acts 1989, No. 195, § 9; 1995, No. 1322, § 8.

23-32-1910. Acts 1989, No. 195, § 10.

23-32-2001. Acts 1993, No. 1016, § 1.

23-32-2002. Acts 1993, No. 1016, § 2.

23-32-2003. Acts 1993, No. 1016, § 3.

23-32-2004. Acts 1993, No. 1016, §§ 4, 5.

23-32-2005. Acts 1993, No. 1016, § 6.

23-32-2006. Acts 1993, No. 1016, § 7.

23-32-2007. Acts 1993, No. 1016, § 8.

23-32-2008. Acts 1993, No. 1016, § 9.

23-32-2009. Acts 1993, No. 1016, § 12.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

Publisher's Notes. As to the 1997 repeal of former chapter 32, see the Publisher's Note at the beginning of this chapter.

SUBCHAPTER 2 — POWERS AND DUTIES OF FINANCIAL INSTITUTIONS GENERALLY

SECTION.

23-32-201. Investment in obligations issued pursuant to Farm Credit Act of 1971.

23-32-202. Investment in and loans to capital development companies.

23-32-203. Loans secured by liens on agricultural lands.

23-32-204. Sale of certain mortgage loans.

23-32-205. Loans under Servicemen's Readjustment Act.

23-32-206. Casualty insurance — Replacement cost coverage.

SECTION.

23-32-207. Deposits and withdrawals — Accounts and certificates of deposit in two or more names.

23-32-208. Sharing of customer-bank communication terminals.

23-32-209. Misleading actions or use of words by unauthorized persons.

23-32-210. Request for stop payment on electronic funds transfer.

Publisher's Notes. As to the 1997 repeal of former chapter 32, see the Publisher's Note at the beginning of this chapter.

Effective Dates. Acts 1997, No. 78, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined

by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 79, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 80, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 81, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary

changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 82, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 83, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 86, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace,

health and safety shall be in full force and effect from and after May 31, 1997.”

Acts 1997, No. 87, § 5: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

Acts 1997, No. 138, § 5: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

23-32-201. Investment in obligations issued pursuant to Farm Credit Act of 1971.

It shall be lawful for all savings and loan associations and insurance companies doing business in the State of Arkansas and for all trustees, guardians of the estates of minors and insane persons, executors, or administrators to invest their funds in notes, bonds, debentures, or other similar obligations issued by the Federal Land Banks, Federal Intermediate Credit Banks, or banks for cooperatives or any other obligations issued pursuant to the provisions of the Farm Credit Act of 1971 and acts amendatory thereto.

History. Acts 1997, No. 83, § 1.

U.S. Code. The Farm Credit Act of

1971, referred to in this section, is codified as 12 U.S.C.S. § 2001 et seq.

23-32-202. Investment in and loans to capital development companies.

(a) In addition to the powers conferred upon building and loan associations, savings and loan associations, or credit unions organized under the laws of this state, each such entity shall have the power to:

(1)(A) Acquire and own on its own behalf any stock or equity interest issued by a capital development company.

(B) However, no such entity under this subsection shall invest more than ten percent (10%) of its capital and unimpaired surplus in the stock or equity interest; and

(2) Make loans to a capital development company, subject, however, to the rules and regulations promulgated by the institutions' primary regulator.

(b) Any investment in stock or equity interest made pursuant to this section shall be considered an asset of the investing institution or association at a value of at least its original purchase price. The asset shall not be valued by any regulatory body in this state at less than at least the purchase price regardless of the failure of a capital development company to pay dividends or distributions of equity to the investors.

History. Acts 1997, No. 82, § 1; 2003, No. 860, § 11.

23-32-203. Loans secured by liens on agricultural lands.

(a) Any person obtaining a loan secured by a lien on real estate in this state which is used primarily for agricultural or livestock purposes shall have the privilege of prepaying the loan in multiples of one hundred dollars (\$100) during any one (1) year following the first anniversary date of the loan, on interest-paying dates, provided the prepayment plus required payments does not exceed twenty percent (20%) of the initial principal amount of the loan.

(b) The privilege shall not be cumulative, and the borrower shall have no further prepayment privilege except that the borrower may, at any time, prepay the principal balance of the loan with accrued interest thereon plus prepayment fees in amounts not exceeding the following:

(1) Five percent (5%) of the unpaid principal balance if prepaid during the first year;

(2) Four percent (4%) of the unpaid principal balance if prepaid during the second year;

(3) Three percent (3%) of the unpaid principal balance if prepaid during the third year;

(4) Two percent (2%) of the unpaid principal balance if prepaid during the fourth year;

(5) One percent (1%) of the unpaid principal balance if prepaid during the fifth year; and

(6) No penalty if prepaid more than five (5) years after the date of the note creating the debt.

(c)(1) This section shall apply only to loans secured by a lien on real estate used primarily for agricultural or livestock purposes.

(2) This section shall not apply to any mortgage, deed of trust, note, or other instrument evidencing indebtedness if the instrument contains a statement in boldface type that this section does not apply and if the lender or agent of the lender points out and explains the provisions to the borrower and the borrower signs a statement on the instrument that the section has been explained and that the borrower agrees.

(d) Any lender or other person applying or attempting to apply more restrictive prepayment requirements, or otherwise violating this section, shall be guilty of a Class A misdemeanor and shall be punished accordingly.

(e) In addition to the criminal penalties provided in subsection (d) of this section, any lender or other person applying or attempting to apply more restrictive prepayment requirements or otherwise violating this section shall forfeit all unmatured interest and principal on the loan and shall be liable for reasonable attorney's fees incurred by the debtor as a result of the lender's violation of this section.

(f) Any payment of interest or principal made by the debtor shall not constitute a waiver of any of the debtor's rights provided by this section or any other law.

History. Acts 1997, No. 81, § 1.

23-32-204. Sale of certain mortgage loans.

Notwithstanding any other provision of law, any savings and loan association or insurance company organized under the laws of this state which has as one (1) of its principal purposes the making or purchasing of loans secured by real estate mortgages is authorized to:

(1) Sell such mortgage loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or any other corporation chartered by an act of Congress for such purposes, or any successor thereof;

(2) In connection therewith, make payments of any capital contributions required pursuant to law in the nature of subscriptions for stock of the entities described in subdivision (1) of this section;

(3) Receive stock evidencing such capital contributions; and

(4) Hold or dispose of such stock.

History. Acts 1997, No. 80, § 1.

23-32-205. Loans under Servicemen's Readjustment Act.

(a) In applying to loans made under the Servicemen's Readjustment Act of 1944, any restrictions of any character imposed by the laws of the State of Arkansas upon loans which state-chartered lending institutions may make, purchase, or otherwise acquire, no consideration whatsoever shall be given:

(1) Any loan or loan obligation which is wholly guaranteed or insured by the Secretary of Veterans Affairs, under Title III of the Servicemen's Readjustment Act of 1944 or for the insurance or guaranty of which the administrator has issued his or her binding commitment; or

(2) If any loan or loan obligation be guaranteed or insured only in part under the Servicemen's Readjustment Act of 1944:

(A) That portion of the loan or loan obligation so guaranteed or insured by the administrator; and

(B) That portion of the loan or loan obligation that may be guaranteed or insured by the United States or by any department, bureau, or agency thereof, including any corporation which, or the capital stock of which, is owned by the United States Government.

(b) As used in this section, "restrictions of any character" includes:

(1) Restrictions on the aggregate amount of loans which any lending institution may lawfully make to any one (1) borrower; and

(2) Restrictions on the duration of the loan or the time or manner of repayment.

(c) As used in this section, "state-chartered lending institutions" includes building and loan associations, savings and loan associations, insurance companies, and other institutions and organizations authorized to make loans in this state.

History. Acts 1997, No. 79, § 1.

U.S. Code. The Servicemen's Readjustment Act of 1944, referred to in this sec-

tion, was repealed and reenacted by Public Law No. 85-857 and is codified as 38 U.S.C. § 3701 et seq.

23-32-206. Casualty insurance — Replacement cost coverage.

(a) A savings and loan association, financial institution, national bank, mortgage company, or any public or private mortgagee doing business in this state, when making a mortgage loan, may not require as a condition or term of the mortgage that the mortgagor purchase casualty insurance on property which is the subject of the mortgage in an amount in excess of the fair market value of the buildings or appurtenances on the mortgaged premises.

(b) This section shall not be construed as limiting the right of the mortgagor to purchase replacement cost coverage on the property which is the subject of the mortgage.

History. Acts 1997, No. 138, § 1.

23-32-207. Deposits and withdrawals — Accounts and certificates of deposit in two or more names.

Checking accounts and savings accounts may be opened and certificates of deposit may be issued by any federally or state-chartered savings and loan association, in the names of two (2) or more persons, either minor or adult, or a combination of minor and adult. Checking accounts, savings accounts, and certificates of deposit shall be held and payable as follows:

(1)(A) Unless a written designation to the contrary is made to the federally or state-chartered savings and loan association, when a deposit has been made or a certificate of deposit purchased in the names of two (2) or more persons and in form to be paid to any of the persons so named, or the survivors of them, the deposit or certificate of deposit and any additions thereto made by any of the persons named in the account shall become the property of those persons as joint tenants with the right of survivorship.

(B) The deposit or certificate of deposit, together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to any of those persons or to the survivors after the death of any of those persons. The payment shall be a valid and sufficient release and discharge of the federally or state-chartered savings and loan association for all payments made on account of the deposit or certificate of deposit;

(2)(A) If the person opening the account or purchasing the certificate of deposit designates in writing to the federally or state-chartered savings and loan association that the account or the certificate of deposit is to be held in joint tenancy or in joint tenancy with right of survivorship, or that the account or certificate of deposit shall be payable to the survivor or survivors of the persons named in the account or certificate of deposit, then the account or certificate of deposit and all additions thereto shall be the property of those persons as joint tenants with right of survivorship.

(B) The account or certificate of deposit may be paid to or on the order of any one (1) of those persons during their lifetime unless a contrary written designation is given to the federally or state-chartered savings and loan association, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them.

(C) The opening of the account or the purchase of the certificate of deposit in this form shall be conclusive evidence in any action or proceeding to which either the federally or state-chartered savings and loan association or the surviving party is a party of the intention of all of the parties to the account or certificate of deposit to vest title to the account or certificate of deposit, and the additions thereto, in the survivor.

(D) The payment shall be a valid and sufficient release of the federally or state-chartered savings and loan association for all payments made on account of the deposit or certificate of deposit;

(3) If an account is opened or a certificate of deposit is purchased in the names of persons who denominate themselves to the federally or state-chartered savings and loan association as husband and wife, whether or not they are at that time husband and wife, then the account or certificate of deposit and all additions thereto shall be the property of those persons as tenants by the entirety. Upon the death of one (1) of those persons, the account shall be payable to the survivor;

(4)(A) If persons open or hold an account or a certificate of deposit in a form indicating that the account or certificate of deposit is a tenants

in common account or certificate of deposit, then the account or certificate of deposit and all additions thereto shall be the property of those persons as tenants in common. The federally or state-chartered savings and loan association, upon receipt of a specific written notice addressed to it of the death of either party, shall pay upon the written order of the survivor, to the survivor, his or her pro rata part of the account or certificate and to the estate of the deceased owner, the deceased's pro rata part of the account or certificate.

(B) However, the federally or state-chartered savings and loan association may pay the entire account or certificate of deposit and all additions thereto upon the receipt or acquittance of either party to the account or certificate, prior to receipt of a specific written notice of death, unless there has been filed with the federally or state-chartered savings and loan association a written designation that more than one (1) signature is required to deal with the account.

(C) In the absence of any written designation to the contrary filed with the federally or state-chartered savings and loan association, all tenants in common accounts shall be deemed to be owned pro rata by the persons named in the account;

(5) If an account is opened or a certificate of deposit is purchased in the name of two (2) or more persons, whether as joint tenants, tenants by the entirety, tenants in common, or otherwise, a federally or state-chartered savings and loan association shall pay withdrawal requests, accept pledges of the account or certificate of deposit, and otherwise deal in any manner with the account or certificate of deposit. This may be done upon the direction of any one (1) of the persons named therein, whether the other persons named in the account or certificate of deposit are living or not, unless one (1) of the persons named therein shall, by written instructions delivered to the federally or state-chartered savings and loan association, designate that the signature of more than one (1) person shall be required to deal with the account or certificate of deposit;

(6)(A) If a person opens or holds an account or certificate of deposit in a form indicating that, on the death of the person named as holder, the account or certificate of deposit shall be paid to or held by another person, then the account or certificate of deposit and any balance thereof which exists from time to time shall be held as a payment on death account or certificate of deposit unless otherwise agreed between the person opening the account or purchasing the certificate of deposit and the federally or state-chartered savings and loan association.

(B) The payment shall be a valid and sufficient release and discharge of the federally or state-chartered savings and loan association for all payments made on account of the account or certificate of deposit;

(7) Upon the death of the holder of the account or certificate of deposit, the persons designated by him or her and who have survived him or her shall be the owners of the account or certificate as joint

tenants with right of survivorship if more than one (1). Any payment made by the federally or state-chartered savings and loan association to any of those persons shall be a complete discharge of the federally or state-chartered savings and loan association as to the amount paid;

(8) No federally or state-chartered savings and loan association paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state;

(9) During his or her lifetime, the person to whom such an account or certificate of deposit is issued may change the designation of any of the persons who are to be holders at his or her death, by a written direction accepted by the federally or state-chartered savings and loan association; and

(10) The terms “designate in writing”, “written designation”, “designate”, “designates”, “designation”, or “designated” shall not be construed to require that the depositor or purchaser affix his or her signature to an instrument.

History. Acts 1997, No. 78, § 1.

CASE NOTES

Absence of Fraud.

Trial court did not err in overruling heirs' objections to an executor's accounting for a grandmother's estate because in the absence of fraud, the executor, as the surviving joint tenant of the bank accounts on which a grandmother and her husband had included the executor as a joint tenant with right of survivorship,

owned the accounts by operation of law; the heirs failed to present sufficient evidence to warrant the imposition of a construction trust on the proceeds of the joint accounts because there was scant evidence that the executor made a false promise to the grandmother. *Williams v. Davis*, 2009 Ark. App. 850, — S.W.3d — (2009).

23-32-208. Sharing of customer-bank communication terminals.

(a)(1) An agreement to share a customer-bank communication terminal, as defined by § 23-32-1301(2) [repealed], shall not prohibit, limit, or restrict the right of a financial institution from charging a customer-bank communication terminal usage fee.

(2) The usage fee shall not exceed two dollars (\$2.00) or two percent (2%) of the gross amount of the transaction, whichever is less, and may only be imposed if imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the usage fee.

(b)(1) For purposes of this section, “usage fee” is a fee charged by a customer-bank communication terminal owner on transactions by a holder of a foreign bank card.

(2) For purposes of this section, a “foreign bank card” is a card eligible for use in a customer-bank communication terminal, which card is not issued by the customer-bank communication terminal owner.

History. Acts 1997, No. 86, § 1.

23-32-209. Misleading actions or use of words by unauthorized persons.

(a)(1) All persons except those described in subdivision (a)(2) of this section are prohibited from using in this state as a portion of or in connection with their place of business their name or title or in reference to themselves in their stationery or advertising the following words or phrases, alone or in combination with any other word or phrase: “bank”, “banker”, “bankers”, “banking”, “federal reserve”, “trust company”, “trust”, “savings and loan”, “credit union”, “building and loan”, or any other word or phrase that tends to induce the belief that the party using it is authorized to engage in the business of a bank, trust company, savings and loan association, or credit union.

(2) The prohibitions contained in subdivision (a)(1) of this section shall not apply to those persons that discharge the burden of proving their authority to use the words or phrases described in subdivision (a)(1) of this section under the laws of this or another state or of the United States.

(b) All persons except those described in subdivision (a)(2) of this section are prohibited from doing or soliciting business in this state substantially in the manner or so as to induce the belief that the business in whole or in part is that of a bank, savings bank, trust company, credit union, or savings and loan association, either by the sale of contract or of shares of its capital stock upon partial or installment payments thereof, by the receipt of money, savings, dues, or other deposits or by the issuance of certificates of deposit or certificates of investment of money, savings, or dues.

(c) Nothing in this section shall be construed as preventing the use of the word “bankers” in combination with other words in connection with the place of business, name, and title of any finance or investment company operated in connection with, as a subsidiary to, or having joint offices with a bank or trust company in this state if the bank or trust company is subject to the supervision of the Bank Commissioner and if the bank or trust company has the word “bankers” alone or in combination with other words in its name or title.

(d) Each violation of subsection (a) of this section shall constitute a Class A misdemeanor.

(e) It is declared to be public policy that this law be liberally construed in favor of its enforcement.

(f) Nothing in this section shall be construed to authorize any person to engage in any activity not otherwise authorized under Arkansas law.

(g) “Person”, when used in this section, means an individual, corporation, partnership, joint venture, trust, estate, limited liability company, or other unincorporated association or any other legal or commercial entity.

23-32-210. Request for stop payment on electronic funds transfer.

(a) Any financial institution doing business in this state shall stop payment of any electronic funds transfer from a customer’s account upon receipt, at least three (3) business days prior to the scheduled transfer, of a written stop-payment order from the customer or any person authorized to draw upon the account describing the transfer with reasonable certainty.

(b) If the written stop-payment order purports to stop all future electronic funds transfers to a particular payee, then the financial institution may require the customer to provide written confirmation that the payee has been informed of the revocation of authority within fourteen (14) days of the delivery of the stop-payment order. In the event the customer fails to provide the confirmation, if required by the financial institution, then the stop-payment order shall cease to be effective at the end of the fourteen-day confirmation period.

(c)(1) For the purposes of this section, “electronic funds transfer” means any transaction in which funds are transferred from a customer’s account to a third-party payee primarily for personal, family, or household purposes.

(2) “Electronic funds transfers” may include automated clearing house debits, wire transfers through the Federal Reserve System or any private network, or other paperless, electronic methods of funds transfer, regardless of whether the transaction is initiated by the customer or the payee.

History. Acts 2001, No. 1723, § 1.

SUBCHAPTER 3 — SURETY BOND EXEMPTION ACT

SECTION.	SECTION.
23-32-301. Title.	23-32-304. Construction.
23-32-302. Purpose.	23-32-305. Exemption from posting bond
23-32-303. Applicability of other laws.	in certain transactions.

Publisher’s Notes. As to the 1997 repeal of former Chapter 32, see the Publisher’s Note at the beginning of this chapter.

Effective Dates. Acts 1997, No. 84, § 9: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas

Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

23-32-301. Title.

This subchapter may be known as the “Surety Bond Exemption Act”.

History. Acts 1997, No. 84, § 1.

23-32-302. Purpose.

The purpose of this subchapter is to exempt state and federal savings and loan associations from being required to furnish security in the form of cash, bond, or otherwise, ensuring proper performance of their duties and obligations in the business transactions set forth in § 23-32-304. This purpose is based on the premise that savings and loan associations are so thoroughly governed by state and federal law, rule, and regulation that there is an insignificant risk of such an institution’s being unable to adequately compensate an injured or damaged party.

History. Acts 1997, No. 84, § 2.

23-32-303. Applicability of other laws.

The law defining savings and loan associations’ formation, structure, and operation shall apply to this subchapter except as provided in this subchapter.

History. Acts 1997, No. 84, § 3.

23-32-304. Construction.

Nothing in this subchapter shall be construed to:

- (1) Prevent a state or federal savings and loan association from electing or agreeing to furnish bond at its own cost;
- (2) Prevent any other party of interest, desiring protection in a business transaction with a state or federal savings and loan association, from electing to secure and pay for a bond covering the state or federal savings and loan association to the benefit of such a party to the transaction; and
- (3) Amend or repeal any law pertaining to:
 - (A) Corporate surety or indemnity bonds covering directors, officers, or employees of a state or federal savings and loan association;
 - (B) Foreign corporations, associations, or institutions not authorized to do business in this state;
 - (C) Actions available against state or federal savings and loan associations for injury or damage; and
 - (D) Bonding requirements involving fiduciary activities of a guardian, executor, administrator, personal representative, trustee, agent, or other fiduciary under the Probate Code or under any other laws covering fiduciary activities.

History. Acts 1997, No. 84, § 4.

A.C.R.C. Notes. The Probate Code re-

ferred to in this section is codified throughout Title 28. See Publisher’s Note

to § 28-1-101.

23-32-305. Exemption from posting bond in certain transactions.

(a) Except when the dollar amount of responsibility assumed exceeds its net capital and surplus, no state or federal savings and loan association, chartered or licensed to do business in this state, shall be required to furnish fidelity, surety, or performance bond, called “bond” in this subchapter, in business transactions involving:

- (1) Garnishment;
- (2) Replevin;
- (3) Foreclosure; and
- (4) Forcible entry and detainer.

(b) At the beginning of any proceeding in all such business transactions, the state or federal savings and loan association shall, upon request, furnish to each party to the transaction a copy of its most recent statement of financial condition.

History. Acts 1997, No. 84, § 5.

SUBCHAPTER 4 — FOREIGN INVESTOR COMPANIES

SECTION.

- 23-32-401. Definition.
- 23-32-402. Application.
- 23-32-403. Transactions not considered engaging in business.
- 23-32-404. Consent to service of process on Secretary of State.

SECTION.

- 23-32-405. Authority to sue and be sued.
- 23-32-406. Transaction of general business not authorized.

Publisher’s Notes. As to 1997 repeal of former Chapter 32, see the Publisher’s Note at the beginning of this chapter.

Effective Dates. Acts 1997, No. 88, § 10: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the Arkansas Banking Act of 1997 for techni-

cal purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

23-32-401. Definition.

As used in this subchapter, unless the context otherwise requires, “investor companies” means all banks, mutual savings associations, mutual savings banks, mutual savings fund societies, trust funds, foundations, pension trusts, or lending agencies, all the capital stock of

which is owned by one (1) or more mutual savings banks or mutual savings fund societies.

History. Acts 1997, No. 88, § 1.

23-32-402. Application.

No provision in this subchapter shall apply to any corporation except those corporations included in § 23-32-401.

History. Acts 1997, No. 88, § 2.

23-32-403. Transactions not considered engaging in business.

Without excluding other activities which may not constitute transaction of, or engaging in, business in this state, investor companies which are engaged in investing in loans secured by real estate and which are not chartered or domesticated in this state and do not engage in a general banking business in this state shall not be considered to be transacting or engaging in business in this state under the law of this state by reason of carrying on in this state any one (1) or more of the following activities:

(1) The acquisition of, or participation in, loans secured by mortgages or deeds of trust on real property situated in Arkansas pursuant to commitment arrangements or agreements made prior to or following the origination or creation of the loans;

(2) The ownership, modification, renewal, extension, transfer, or foreclosure of such loans, or the acceptance of substitute or additional obligors thereon;

(3) The maintaining or defending of actions or suits relative to such loans, mortgages, or deeds of trust;

(4) The maintenance of bank accounts in Arkansas in connection with the collection or servicing of such loans;

(5) The making, collection, and servicing of such loans through an Arkansas agent or agency engaged in the business of servicing real estate loans for investors;

(6) The taking of deeds to the mortgaged property either in lieu of foreclosure or for the purpose of transferring title either to the Federal Housing Administration, the Department of Veterans Affairs, or other governmental agency;

(7) The acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure;

(8) The management, rental, maintenance, and sale or the operating, maintaining, renting, or otherwise dealing with, selling, or disposing of real property acquired under foreclosure sale or by agreement in lieu thereof; or

(9) The physical inspection and appraisal of property in Arkansas as security for deeds of trust or mortgage negotiations for the purchase of such loans.

History. Acts 1997, No. 88, § 3.

23-32-404. Consent to service of process on Secretary of State.

(a) All investor companies, except national banking institutions and state-chartered banks subject to federal regulation, acting either in their own behalf or acting as trustee for trust funds, foundations, pension funds, or related investors, must, before purchasing mortgage notes, mortgages, or deeds of trust, file a statement with the Secretary of State constituting him or her as their agent for service.

(b) The statement shall contain the address of the investor company and shall be signed by the president, secretary, general manager, trustee, or other person charged with the administration of the funds of the investor company.

(c) It shall be the duty of the Secretary of State, upon service of process, to forward all such process forthwith by registered mail to the address shown on the statement of the appropriate investor company.

History. Acts 1997, No. 88, § 4.

23-32-405. Authority to sue and be sued.

The investor companies may sue or be sued in this state in relation to the mortgage notes, mortgages, or deeds of trust, and service may be had on the Secretary of State when an investor company is a defendant. The venue of the actions shall be in the county of the residence of any party to the suit, unless otherwise provided by law, except that when land is involved, the venue shall be in the county where the land or any part of it is located.

History. Acts 1997, No. 88, § 5.

23-32-406. Transaction of general business not authorized.

Nothing in this subchapter shall be construed as authorizing investor companies to transact the general business of a chartered bank or trust company, or any business in this state, except as herein provided.

History. Acts 1997, No. 88, § 6.

SUBCHAPTER 5 — AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT

SECTION.

- 23-32-501. Definitions.
- 23-32-502. Scope of subchapter.
- 23-32-503. Forms.
- 23-32-504. Designation of agent.
- 23-32-505. Payment to designated agent.

SECTION.

- 23-32-506. Payment to minor.
- 23-32-507. Discharge.
- 23-32-508. Setoff.
- 23-32-509. Effect on other laws.

Publisher's Notes. As to the 1997 repeal of former Chapter 32, see the Publisher's Note at the beginning of this chapter.

Effective Dates. Acts 1997, No. 85, § 13: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Banking Act of 1997 goes into effect on May 31, 1997; that the law addressed by this act was repealed by the

Arkansas Banking Act of 1997 for technical purposes; that this act will reenact that law with necessary changes; and that this act must go into effect on May 31, 1997, in order to correlate with the Banking Act of 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

23-32-501. Definitions.

In this subchapter:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account;

(2) "Agent" means a person authorized to make account transactions for a party;

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after the death of all parties or for whom a party is named as trustee;

(4) "Devisee" means any person designated in a will to receive a testamentary disposition of real or personal property;

(5) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a savings bank, building and loan association, savings and loan company or association, and credit union;

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent;

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge;

(8) "Person" means an individual, a corporation, an organization, or other legal entity; and

(9) "Personal representative" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

History. Acts 1997, No. 85, § 1.

23-32-502. Scope of subchapter.

- (a) This subchapter applies to accounts in this state.
- (b) This subchapter does not apply to:
 - (1) An account established for a partnership, joint venture, or other organization for a business purpose;
 - (2) An account controlled by one (1) or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or
 - (3) A fiduciary or trust account in which the relationship is established other than by the terms of the account.

History. Acts 1997, No. 85, § 2.

23-32-503. Forms.

A contract of deposit that substantially contains the following form establishes an agency account, and the account is governed by the provisions of this subchapter applicable to agency accounts:

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries. [To Add Agency Designation To Account, Name One Or More Agents].

.....

[Select One and Initial]:

☐ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

☐ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

History. Acts 1997, No. 85, § 3.

23-32-504. Designation of agent.

- (a) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent’s authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.
- (b) Death of the sole party or last surviving party terminates the authority of an agent.
- (c) An agent in an account with an agency designation has no beneficial right to sums on deposit.

History. Acts 1997, No. 85, § 4.

23-32-505. Payment to designated agent.

On request of an agent under an agency designation for an account, a financial institution may, unless it actually knows that the authority of agency has terminated, pay to the agent sums on deposit in the account.

History. Acts 1997, No. 85, § 5.

23-32-506. Payment to minor.

If a financial institution is required or permitted to make payment pursuant to this subchapter to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act, § 9-26-201 et seq.

History. Acts 1997, No. 85, § 6.

23-32-507. Discharge.

(a)(1) Payment made pursuant to this subchapter in accordance with an agency of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors.

(2) Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b)(1) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the agency account should not be permitted, and the financial institution has had a reasonable opportunity to act on it when payment is made.

(2) Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section.

(3) Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise that has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the agency account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in agency accounts or payments made from agency accounts.

History. Acts 1997, No. 85, § 7.

23-32-508. Setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the agency account. The amount of the agency account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled or, in the absence of proof of that proportion, an equal share with all parties.

History. Acts 1997, No. 85, § 8.

23-32-509. Effect on other laws.

This subchapter is supplemental to all laws pertaining to the deposit of funds in financial institutions.

History. Acts 1997, No. 85, § 9.

CHAPTER 33 INSOLVENCY AND LIQUIDATION

SECTION.

23-33-101 — 23-33-406. [Repealed.]

23-33-101 — 23-33-406. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1997, No. 89, § 3. The chapter was derived from:

23-33-101. Acts 1913, No. 113, § 51; C. & M. Dig., § 717; Acts 1931, No. 252, § 13; Pope's Dig., § 763; Acts 1939, No. 10, § 1; A.S.A. 1947, § 67-604.

23-33-102. Acts 1913, No. 113, [§ 70], as added by Acts 1921, No. 496, § 7; Pope's Dig., § 753; A.S.A. 1947, § 67-603.

23-33-103. Acts 1913, No. 113, § 52; 1917, No. 139, § 5, p. 748; C. & M. Dig., § 718; Pope's Dig., § 764; A.S.A. 1947, § 67-605.

23-33-104. Acts 1969, No. 179, § 14; A.S.A. 1947, § 67-631; Acts 1987, No. 963, §§ 1, 2; 1988 (4th Ex. Sess.), No. 2, § 9; 1988 (4th Ex. Sess.), No. 12, § 9.

23-33-105. Acts 1913, No. 113, § 50; C. & M. Dig., § 716; Acts 1921, No. 496, § 5; 1923, No. 627, § 17; Pope's Dig., § 762; A.S.A. 1947, § 67-601.

23-33-106. Acts 1913, No. 113, § 46; C. & M. Dig., § 712; Pope's Dig., § 739; A.S.A. 1947, § 67-602.

23-33-201. Acts 1913, No. 113, § 53; 1917, No. 139, § 6, p. 748; C. & M. Dig., § 719; Acts 1921, No. 496, § 4; 1933, No. 61, § 1; Pope's Dig., § 765; A.S.A. 1947, § 67-607.

23-33-202. Acts 1913, No. 113, § 45; C. & M. Dig., § 711; Pope's Dig., § 738; A.S.A. 1947, § 67-606.

23-33-203. Acts 1913, No. 113, § 54; 1917, No. 139, § 7, p. 748; C. & M. Dig., § 722; Acts 1923, No. 627, § 5; 1929, No. 102, § 4; Pope's Dig., §§ 767, 768; A.S.A. 1947, §§ 67-608, 67-609.

23-33-204. Acts 1913, No. 113, § 56; C. & M. Dig., § 724; Pope's Dig., § 770; A.S.A. 1947, § 67-613.

23-33-205. Acts 1913, No. 113, § 55; C. & M. Dig., § 723; Acts 1933, No. 61, § 2; Pope's Dig., § 769; A.S.A. 1947, § 67-612.

23-33-206. Acts 1913, No. 113, § 53; 1917, No. 139, § 6, p. 748; C. & M. Dig., § 719; Acts 1921, No. 496, § 4; 1933, No. 61, § 1; Pope's Dig., § 765; A.S.A. 1947, § 67-607.

23-33-207. Acts 1913, No. 113, § 60; C.

& M. Dig., § 728; Pope's Dig., § 772; A.S.A. 1947, § 67-619.

23-33-208. Acts 1933, No. 23, § 4; Pope's Dig., § 824; A.S.A. 1947, § 67-620.

23-33-209. Acts 1939, No. 199, §§ 1-3; A.S.A. 1947, §§ 67-616 — 67-618.

23-33-210. Acts 1933, No. 61, § 5; Pope's Dig., § 799; A.S.A. 1947, § 67-614.

23-33-211. Acts 1933, No. 61, § 5; Pope's Dig., § 799; A.S.A. 1947, § 67-615.

23-33-212. Acts 1913, No. 113, § 55; C. & M. Dig., § 723; Acts 1933, No. 61, § 2; Pope's Dig., § 769; A.S.A. 1947, § 67-612.

23-33-213. Acts 1913, No. 113, § 56; C. & M. Dig., § 724; Pope's Dig., § 770; A.S.A. 1947, § 67-613.

23-33-214. Acts 1933 (1st Ex. Sess.), No. 15, § 3A; A.S.A. 1947, § 67-622.

23-33-301. Acts 1913, No. 113, [§ 71], as added by Acts 1927, No. 107, § 1; Pope's Dig., § 742; A.S.A. 1947, § 67-610.

23-33-302. Acts 1913, No. 113, [§ 71], as added by Acts 1927, No. 107, § 1; Pope's Dig., § 742; A.S.A. 1947, § 67-610.

23-33-303. Acts 1913, No. 113, [§ 71], as added by Acts 1927, No. 107, § 1; Pope's Dig., § 742; A.S.A. 1947, § 67-610.

23-33-304. Acts 1913, No. 113, [§ 72], as added by Acts 1923, No. 627, § 1; Pope's Dig., § 743; A.S.A. 1947, § 67-611.

23-33-305. Acts 1913, No. 113, [§ 71], as added by Acts 1927, No. 107, § 1; Pope's Dig., § 742; A.S.A. 1947, § 67-610.

23-33-306. Acts 1913, No. 113, §§ 54, 56; 1917, No. 139, § 7, p. 748; C. & M. Dig., §§ 722, 724; Acts 1923, No. 627, § 5;

Pope's Dig., §§ 768, 770; A.S.A. 1947, §§ 67-609, 67-613.

23-33-307. Acts 1913, No. 113, §§ 54, 56; 1917, No. 139, § 7, p. 748; C. & M. Dig., §§ 722, 724; Acts 1923, No. 627, § 5;

Pope's Dig., §§ 768, 770; A.S.A. 1947, §§ 67-609, 67-613.

23-33-308. Acts 1913, No. 113, [§ 71], as added by Acts 1927, No. 107, § 1; Pope's Dig., § 742; A.S.A. 1947, § 67-610.

23-33-309. Acts 1933 (1st Ex. Sess.), No. 15, § 3; Pope's Dig., § 808; A.S.A. 1947, § 67-621.

23-33-310. Acts 1913, No. 113, § 57; C. & M. Dig., § 725; Pope's Dig., § 771; A.S.A. 1947, § 67-623.

23-33-401. Acts 1932 (2nd Ex. Sess.), No. 5, § 1; 1937, No. 208, § 1; Pope's Dig., § 791; A.S.A. 1947, § 67-624.

23-33-402. Acts 1932 (2nd Ex. Sess.), No. 5, § 5; 1937, No. 208, § 5; Pope's Dig., § 795; A.S.A. 1947, § 67-628.

23-33-403. Acts 1932 (2nd Ex. Sess.), No. 5, §§ 2, 3; 1937, No. 208, §§ 2, 3; Pope's Dig., §§ 792, 793; A.S.A. 1947, §§ 67-625, 67-626.

23-33-404. Acts 1932 (2nd Ex. Sess.), No. 5, § 4; 1937, No. 208, § 4; Pope's Dig., § 794; A.S.A. 1947, § 67-627.

23-33-405. Acts 1932 (2nd Ex. Sess.), No. 5, § 6; Pope's Dig., § 796; A.S.A. 1947, § 67-629.

23-33-406. Acts 1932 (2nd Ex. Sess.), No. 5, § 7; Pope's Dig., § 797; A.S.A. 1947, § 67-630.

For present law, see Chapter 49 of this title.

CHAPTER 34

MISCELLANEOUS VIOLATIONS OF BANKING LAWS

SECTION.

23-34-101 — 23-34-112. [Repealed.]

23-34-101 — 23-34-112. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1997, No. 89, § 3. The chapter was derived from:

23-34-101. Acts 1913, No. 113, [§ 73], as added by Acts 1923, No. 627, § 6; 1931, No. 35, § 1; Pope's Dig., § 700; Acts 1969, No. 179, § 21; A.S.A. 1947, § 67-701.

23-34-102. Acts 1929, No. 98, §§ 1, 2; Pope's Dig., §§ 789, 790, 1023, 1024; A.S.A. 1947, §§ 67-702, 67-703.

23-34-103. Acts 1913, No. 113, [§ 73], as added by Acts 1923, No. 627, § 6; 1931, No. 35, § 1; Pope's Dig., § 700; Acts 1969, No. 179, § 21; A.S.A. 1947, § 67-701.

23-34-104. Acts 1917, No. 139, § 12, p. 748; C. & M. Dig., § 736; Pope's Dig., § 779; A.S.A. 1947, § 67-711.

23-34-105. Acts 1913, No. 113, [§ 74], as added by Acts 1921, No. 496, § 8; Pope's Dig., § 754; A.S.A. 1947, § 67-704.

23-34-106. Acts 1913, No. 113, § 44; C. & M. Dig., § 710; Pope's Dig., § 737; A.S.A. 1947, § 67-705.

23-34-107. Acts 1933, No. 60, § 10; Pope's Dig., § 693; A.S.A. 1947, § 67-706.

23-34-108. Acts 1913, No. 113, § 24; C. & M. Dig., § 688; Pope's Dig., § 716; A.S.A. 1947, § 67-707.

23-34-109. Acts 1901, No. 7, § 1, p. 18; C. & M. Dig., § 729; Pope's Dig., § 773; A.S.A. 1947, § 67-708.

23-34-110. Acts 1913, No. 113, § 47; C. & M. Dig., § 713; Pope's Dig., § 740; A.S.A. 1947, § 67-709.

23-34-111. Acts 1913, No. 113, § 48; C. & M. Dig., § 714; Pope's Dig., § 741; A.S.A. 1947, § 67-710.

23-34-112. Acts 1933, No. 60, § 9; Pope's Dig., § 692; A.S.A. 1947, § 67-713.

For present law, see Chapter 50 of this title.

CHAPTER 35

CREDIT UNIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. SUPERVISION.
- 3. ORGANIZATION.
- 4. MEMBERSHIP.
- 5. SHARES.
- 6. OPERATION.
- 7. MERGER, CONVERSION, OR DISSOLUTION.
- 8. PROHIBITED PRACTICES.

RESEARCH REFERENCES

ALR. Authority of credit union to engage in "share-draft" business. 14 A.L.R.4th 1355.

Ark. L. Rev. Electronic Funds Transfer

and "Competitive Equality": A Doctrine That Does Not Compute, 32 Ark. L. Rev. 347.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-35-101. Definition and purpose of credit union or central credit union.

23-35-102. Operation of central credit unions.

SECTION.

23-35-103. Taxation.

23-35-104. Insurance of accounts.

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1182, § 6: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 530 of 1975 amending various sections of Act 132 of 1971 was inconsistent and contained errors; in addition, due to the unique loan services

offered by a credit union to its members, it is in the best interest of the citizens of the State of Arkansas to maintain the stability of credit unions; that for such continued stability to be assured, it is necessary to protect the rights and proprietary interests of each member in each credit union so as to encourage continued investment

and insure that no loss will be incurred by each depositor; that Federal insurance of depositor accounts in State-chartered credit unions is not presently mandatory but that it is in the public interest and for the protection of depositors that each State-chartered credit union have Federal insurance of accounts; that it is in the best interest of the public and each State-chartered credit union that a reasonable time be allowed in which each State-chartered credit union should obtain Federal insurance of depositors accounts and that this Act should be given effect immediately to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval.”

Acts 1987, No. 995, § 6: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1182 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 1 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 1 et seq.

23-35-101. Definition and purpose of credit union or central credit union.

A credit union or central credit union is a cooperative nonprofit association, incorporated in accordance with the provisions of this chapter for the twofold purpose of encouraging thrift among its members and creating a source of credit at fair and reasonable rates of interest. A credit union or central credit union provides an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History. Acts 1971, No. 132, §§ 1, 2; A.S.A. 1947, §§ 67-901, 67-902.

23-35-102. Operation of central credit unions.

(a) A central credit union may be organized and operated as provided in this chapter.

(b) A central credit union shall be designated by use of the term “central” in its official name. A credit union not conforming to the requirements for a central credit union shall not use the term “central” in its official name.

(c) A central credit union shall be subject to all the provisions of this chapter. Specific provisions setting forth the operation of central credit unions shall take precedence over other provisions of this chapter if those specific provisions are inconsistent with other parts of this chapter.

History. Acts 1971, No. 132, § 2; 1975, No. 530, § 2; A.S.A. 1947, § 67-902.

23-35-103. Taxation.

A credit union shall be deemed an institution for savings and, together with all accumulations therein, shall not be subject to taxation except as to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one (1) member to another.

History. Acts 1971, No. 132, § 35; A.S.A. 1947, § 67-935.

23-35-104. Insurance of accounts.

(a) Each credit union organized under this chapter shall obtain insurance of member share and deposit accounts under the provisions of Title II of the Federal Credit Union Act.

(b) A credit union which has been denied a commitment for insurance of its share and deposit accounts shall either dissolve or merge with another credit union which is insured under Title II of the Federal Credit Union Act.

History. Acts 1971, No. 132, § 2; 1975 (Extended Sess., 1976), No. 1182, § 1; A.S.A. 1947, § 67-902; reen. Acts 1987, No. 995, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 995, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976

Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

U.S. Code. Title II of the Federal Credit Union Act, referred to in this section, is codified as 12 U.S.C. § 1781 et seq.

SUBCHAPTER 2 — SUPERVISION

SECTION.

- 23-35-201. Credit Union Division — State Credit Union Supervisor — Staff.
- 23-35-202. Authority of State Credit Union Supervisor — Rules and regulations.

SECTION.

- 23-35-203. Annual examination of credit unions.
- 23-35-204. Reports — Penalty for failure to file.
- 23-35-205. Annual supervision fee.

Effective Dates. Acts 1979, No. 85, § 3: Feb. 9, 1979. Emergency clause provided: "It has been found and determined by the General Assembly that federal associations doing business in this State have and will have an unfair competitive advantage over credit unions chartered by this State and that it is imperative to immediately remove such unfair competitive advantage. Therefore, an emergency

is declared to exist, and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its passage and approval."

Acts 1985, No. 936, § 22: Emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Credit Union Act does not provide for sufficient capital-

ization for newly chartered credit unions and does not give credit unions sufficient real estate lending authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the im-

mediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bld. & L. Asso., § 3 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., §§ 5, 6.

23-35-201. Credit Union Division — State Credit Union Supervisor — Staff.

There is created under the State Securities Department a Credit Union Division which shall be administered by the State Credit Union Supervisor. The Securities Commissioner shall act as State Credit Union Supervisor. The supervisor shall appoint such assistants, secretaries, and examiners as may be necessary to assist in the performance of his or her duties under this chapter.

History. Acts 1971, No. 132, § 41; 1985, No. 936, § 20; A.S.A. 1947, § 67-941.

23-35-202. Authority of State Credit Union Supervisor — Rules and regulations.

(a) All state-chartered credit unions shall be supervised and regulated by the State Credit Union Supervisor acting pursuant to the authority delegated by this chapter. The supervisor shall be responsible for the enforcement of this chapter and the credit union bylaws, and he or she shall have the authority to adopt rules and regulations governing credit unions in a manner consistent with this chapter and other statutes of Arkansas.

(b) The supervisor may, irrespective of any limitations in this chapter and subject to other Arkansas law, make reasonable rules authorizing a credit union to exercise any of the powers conferred upon a federally chartered credit union doing business in this state which is subject to the regulations of the National Credit Union Administration, if the supervisor finds that the exercise of the power:

(1) Serves the public convenience and advantage; and

(2) Equalizes and maintains the quality of competition between state-chartered credit unions and federally chartered credit unions. This includes, but it is not limited to:

(A) The offering of the various types of accounts offered by federal credit unions;

(B) Designation of the legal relationships of an account holder;

(C) Adoption of any dividend paying date or other procedure or practice of paying dividends;

(D) Adoption of any business practice, procedure, method, or system authorized for federal credit unions; and

(E) The making of any loan or investment that a federal credit union doing business in this state is authorized to make.

History. Acts 1971, No. 132, § 40; 1979, No. 85, § 1; A.S.A. 1947, § 67-940.

23-35-203. Annual examination of credit unions.

(a) The State Credit Union Supervisor shall cause each credit union to be examined annually. Each credit union and all of its officers and agents shall be required to give representatives of the supervisor full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination, the representatives shall have power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(b) A report of this examination shall be forwarded to the credit union after the completion of the examination. The report shall be reviewed at the next monthly meeting of the board of directors of the credit union and a reply, if requested by the supervisor, shall be forwarded by the board by the date requested by the supervisor.

(c) For the purpose of these examinations, each credit union shall pay an examination fee based upon the cost of performing the examination. Each credit union shall bear a proportionate share of the expenses of the supervisor, in accordance with schedules adopted by the supervisor.

(d) If there is any violation of this section by a credit union, the supervisor may fine a credit union ten dollars (\$10.00) per day for ten (10) days. If the violation has not been corrected by the tenth day, he or she may take any action he or she deems necessary and appropriate under the provisions of this chapter.

History. Acts 1971, No. 132, § 33; 1975, No. 530, §§ 19, 20; A.S.A. 1947, § 67-933.

23-35-204. Reports — Penalty for failure to file.

(a) Credit unions subject to the provisions of this chapter shall report to the State Credit Union Supervisor annually, on or before February 1, on forms supplied by him or her for that purpose. Additional reports may be required by the supervisor, as is deemed necessary.

(b)(1) If any report remains in arrears for more than fifteen (15) days, a fine of five dollars (\$5.00) for each day the report remains in arrears shall be levied against the offending credit union.

(2) If the report is not returned within thirty (30) days of the due date, the supervisor may, after written notice to the president of the credit union of his or her intention to do so, suspend or revoke the certificate of approval, take possession of the business and property of the credit union, and order its dissolution in accordance with § 23-35-704.

History. Acts 1971, No. 132, § 30;
A.S.A. 1947, § 67-930.

23-35-205. Annual supervision fee.

Each credit union subject to the provisions of this chapter shall pay an annual supervision fee which shall be determined by the State Credit Union Supervisor. The fees must be reasonably related to the administrative cost of supervisory services required under this chapter and shall be determined after notice and an opportunity to be heard is given to the credit unions affected.

History. Acts 1971, No. 132, § 31;
A.S.A. 1947, § 67-931.

SUBCHAPTER 3 — ORGANIZATION

SECTION.

- 23-35-301. Procedure for obtaining charter.
- 23-35-302. Amendments to articles of incorporation and bylaws.
- 23-35-303. Board of directors and committees generally.
- 23-35-304. Duties of board of directors.
- 23-35-305. Officers — Selection, term, and oath.

SECTION.

- 23-35-306. Credit committee — Loan officers.
- 23-35-307. Supervisory committee.
- 23-35-308. Compensation of officers, directors, committee members, and employees.

Effective Dates. Acts 1979, No. 206, § 9: Feb. 23, 1979. Emergency clause provided: "It has been found and determined by the General Assembly that federal associations doing business in this State now have an unfair competitive advantage over credit unions chartered by this State and that it is imperative to immediately remove such unfair competitive advantage and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its passage and approval."

Acts 1985, No. 936, § 22: Emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Credit Union Act does not provide for sufficient capitalization for newly chartered credit unions and does not give credit unions sufficient real estate lending authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 6 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 9 et seq.

23-35-301. Procedure for obtaining charter.

(a) Any seven (7) or more residents of the State of Arkansas, of legal age, who have a common bond referred to in § 23-35-401 may organize a credit union and become charter members thereof by:

(1) Executing duplicate copies of the articles of incorporation, which shall state:

(A) The name, which shall include the words "credit union" and which shall be different from the name of any other existing credit union, and the town or city wherein the proposed credit union is to have its principal place of business;

(B) The term of existence of the credit union, which shall be perpetual;

(C) The par value of the shares of the credit union, which shall be in one (1) class of five-dollar multiples of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00);

(D) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed by each; and

(E) That the credit union shall have the power to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated;

(2) Preparing and adopting duplicate copies of bylaws for the general government of the credit union, consistent with the provisions of this chapter; and

(3) Forwarding the required charter fee, the articles of incorporation, and the bylaws to the State Credit Union Supervisor.

(b)(1) The supervisor shall have the authority to investigate the application for charter to determine whether the proposed credit union meets the objectives of this chapter.

(2) The determination for the approval of the application for charter shall be under such rules and regulations as shall be adopted by the supervisor. These rules and regulations shall give account to the number of potential members, their stability of employment or membership in the association comprising the common bond of membership, and the economic characteristics of the proposed common bond.

(3) If the supervisor determines that the proposed credit union does not meet these objectives, the charter application shall be denied. If the fee, articles of incorporation, and bylaws conform to the statute, he or she shall issue a certificate of approval of the articles and return a copy of the bylaws and the articles to the applicant, which shall be preserved in the permanent files of the credit union.

(c) The determination for the approval of the application for charter of a central credit union shall be made by the supervisor after an

investigation as to the need for the credit union and upon satisfying himself or herself that the objectives of this chapter are met.

(d) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

(e) In order to simplify the organization of credit unions, the supervisor shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance.

(f) The minimum paid-in capital with which a credit union may begin business shall not be less than five thousand dollars (\$5,000).

(g) The supervisor shall determine that a firm commitment to insure share and deposit accounts has been issued under the provisions of Title II of the Federal Credit Union Act before a charter application can be issued.

History. Acts 1971, No. 132, § 2; 1975, No. 530, §§ 1, 2; 1985, No. 936, § 1; A.S.A. 1947, § 67-902.

U.S. Code. Title II of the Federal Credit Union Act, referred to in this section, is codified as 12 U.S.C. § 1781 et seq.

23-35-302. Amendments to articles of incorporation and bylaws.

(a) The articles of incorporation and the bylaws may be amended as provided in the bylaws.

(b)(1) Amendments to the articles of incorporation and to the bylaws shall be submitted in writing to the State Credit Union Supervisor.

(2) Amendments shall become effective upon approval in writing by the supervisor and payment of the appropriate fee to the appropriate state agency.

History. Acts 1971, No. 132, § 3; A.S.A. 1947, § 67-903.

23-35-303. Board of directors and committees generally.

(a) The business affairs of the credit union shall be managed by a board of directors of not fewer than five (5) directors, a credit committee of not fewer than three (3) members, and a supervisory committee of not fewer than three (3) members, all to be elected at the annual members' meeting by and from the members.

(b) All members of the board and of the committees shall hold office for such terms as the bylaws may provide.

History. Acts 1971, No. 132, § 11; 1975, No. 530, § 7; A.S.A. 1947, § 67-911.

23-35-304. Duties of board of directors.

(a) The board of directors of the credit union shall be responsible for general management of the affairs, funds, and records of the credit union and shall meet as often as necessary, but not less than once each month.

(b) The board shall:

(1) Act upon applications for membership, or appoint and authorize an executive committee or a membership officer from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, to approve applications for membership under such conditions as the board may prescribe. The committee or membership officer so authorized shall submit to the board, at each monthly meeting, a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require. The membership officer shall not have the authority to disapprove any application for membership;

(2) Purchase a blanket fidelity bond covering the officers, employees, members of official committees, attorneys at law, and other agents, with protection against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery, alteration of instruments, misplacement or mysterious disappearance, and for faithful performance of duty, and, if applicable, building insurance, liability insurance, and such other insurance as is necessary for the operation and the protection of the credit union and its members. The State Credit Union Supervisor shall prescribe in his or her rules and regulations the amount of minimum bond coverage required for all credit unions according to their asset categories;

(3) Determine the rate of interest, consistent with the provisions of this chapter, which shall be charged on loans; the rate of interest refund, if any, to be paid to borrowing members; the qualifications for participation, and the manner of computation and payment. The interest rebates are to be paid from the credit balance of the retained earnings account;

(4) Declare dividends as provided by this chapter;

(5) Limit the number of shares which may be owned by a member, not to exceed the maximum amount insured under Title II of the Federal Credit Union Act;

(6) Fill vacancies, occurring between annual meetings, in the board, credit committee, and supervisory committee until the election, or appointment and qualification, of successors;

(7) Determine the maximum amount, both secured and unsecured, which may be loaned to any one (1) member;

(8) Have charge of the investment of surplus funds of the credit union as provided by this chapter;

(9) Authorize the employment of such persons as may be necessary to carry on the business of the credit union and determine the compensation of employees and the treasurer;

(10) Authorize the conveyance of property;

(11) Borrow or lend money to carry on the functions of the credit union;

(12) Perform such other duties as the members may require;

(13) Designate depositories for the funds of the credit union;

(14) Suspend any or all members of the credit and supervisory committees for failure to perform their duties upon unanimous approval by the board;

(15) Establish and provide for compensation of loan officers appointed by the credit committee and compensation of auditing assistance requested by the supervisory committee;

(16) Suspend any officer, director, or committee member from his or her official position for failure to attend three (3) consecutive regular meetings without cause or for otherwise failing to perform any of the duties required of him or her as an official, but only after he or she has been given reasonable notice of a meeting for suspension and an opportunity to be heard on the charges; and

(17) Perform or authorize any action consistent with this chapter not specifically reserved for the members by the bylaws or this chapter.

History. Acts 1971, No. 132, § 13; 1975, No. 530, §§ 8-10; 1979, No. 206, § 4; 1985, No. 936, § 6; A.S.A. 1947, § 67-913.

U.S. Code. Title II of the Federal Credit Union Act, referred to in this section, is codified as 12 U.S.C. § 1781 et seq.

23-35-305. Officers — Selection, term, and oath.

(a) Within ten (10) days following the organizational meeting and each annual meeting, the directors of the credit union shall elect from their own number a chief executive officer who may be designated as chair or president of the board, vice chair or vice president, a treasurer, and a secretary, of whom the last two (2) may be the same individual. The board of directors may employ an officer in charge of operations whose title shall be either president or general manager or, in lieu thereof, the board of directors of the credit union may designate the treasurer or an assistant treasurer to be in active charge of the affairs of the credit union.

(b) Within ten (10) days after election or appointment to any position, each person so elected or appointed shall execute an oath of office by which he or she agrees to accept and to diligently and faithfully carry out the duties and responsibilities of the position to which he or she has been elected or appointed and not to negligently or willfully violate, or permit to be violated, any provision of this chapter or the bylaws of the credit union.

(c) The president and secretary shall execute a certificate of election which shall set forth the names and addresses of the officers, directors, and committee members elected or appointed.

(d) The oath of office and the certificates of election shall be executed on forms prepared by the Credit Union Division, and one (1) copy of each shall be filed with the division within twenty (20) days after the election or appointment.

(e) The terms of the officers shall be for one (1) year or until their successors are chosen and have been duly qualified.

History. Acts 1971, No. 132, § 12;
1979, No. 206, § 3; 1985, No. 936, § 5;
A.S.A. 1947, § 67-912.

23-35-306. Credit committee — Loan officers.

(a)(1) The credit committee of the credit union shall be responsible for general supervision of all loans to members.

(2) The credit committee shall not be composed of any person who is a member of the board of directors of the credit union or of the supervisory committee.

(3) It shall be the duty of the credit committee to review all applications for loans, to ascertain whether the loans would be for a provident and productive purpose and would benefit the applicant, to determine whether the security offered is sufficient, and to determine whether the terms of the application are proper.

(4) The credit committee shall meet as often as may be required, after due notice has been given to each member thereof, but not less than once a month. The credit committee shall keep a record of all meetings and shall make a report to the members at the annual meeting.

(b)(1) The credit committee may appoint one (1) or more loan officers to act under the supervision of the credit committee, and these loan officers may make loans without the necessity for a meeting of, or approval by, any members of the credit committee.

(2) No more than one (1) member of the credit committee may serve in the position of loan officer.

(3) No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him or her in his or her capacity as loan officer.

(4) Each loan officer shall, within ten (10) days of the filing of each loan application received by him or her from another member or by referral from another officer, furnish to the credit committee a full report of the application.

(c) All applications for loans not approved by a loan officer shall be considered and acted upon by the credit committee.

History. Acts 1971, No. 132, § 15;
1975, No. 530, § 12; 1985, No. 936, § 7;
A.S.A. 1947, § 67-915.

23-35-307. Supervisory committee.

(a) The supervisory committee of the credit union shall make or cause to be made, at least annually:

(1) An examination of the affairs of the credit union, including an audit of its books;

(2) A report of its annual examination to the board of directors of the credit union; and

(3) An audit, a report of which shall be submitted to members at the next annual meeting of the credit union.

(b) The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer at least once a year. The term "passbook" shall include any book, statement of accounts, or other pertinent or related record.

(c) The supervisory committee may suspend, by a unanimous vote, any officer of the credit union or any member of the credit committee or of the board, until the next members' meeting, which shall not be less than seven (7) days nor more than fourteen (14) days after the suspension. At the meeting, the suspension shall be acted upon by the members.

(d) The supervisory committee may call, by a majority vote, a special meeting of the members to consider any violation of this chapter, the charter, the bylaws, or any practice of the credit union deemed by the committee to be unsafe or unauthorized.

(e) Any member of the supervisory committee may be suspended by the board, upon majority vote. The members shall decide, at a meeting held not less than seven (7) days nor more than fourteen (14) days after the suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee.

History. Acts 1971, No. 132, § 17;
1979, No. 206, § 6; A.S.A. 1947, § 67-917.

23-35-308. Compensation of officers, directors, committee members, and employees.

(a) No officer, director, or committee member of the credit union, other than the treasurer whom the board of directors of the credit union has specifically appointed or contracted to actively work in the credit union, may be compensated, directly or indirectly, for his or her services as such. This shall not be construed to prevent reimbursement of directors and committee members for actual expenses they may incur in carrying out the duties of their office.

(b) The compensation to be paid to the treasurer and to the employees who are authorized by the board shall be established by the board at its monthly meetings or in the annual budget allocations.

History. Acts 1971, No. 132, § 18;
1985, No. 936, § 12; A.S.A. 1947, § 67-918.

SUBCHAPTER 4 — MEMBERSHIP

SECTION.

23-35-401. Membership requirements.

23-35-402. Nonliability of members.

SECTION.

23-35-403. Meetings — Voting.

23-35-404. Expulsion of members.

Effective Dates. Acts 1979, No. 206, § 9: Feb. 23, 1979. Emergency clause provided: "It has been found and determined by the General Assembly that federal associations doing business in this State now have an unfair competitive advantage over credit unions chartered by this State and that it is imperative to immediately remove such unfair competitive ad-

vantage and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 16 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 31 et seq.

23-35-401. Membership requirements.

(a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons, having the common bond set forth in the bylaws, as have been admitted as members, have paid the entrance fee as provided in the bylaws, have prescribed and paid for one (1) or more shares, and have complied with such other requirements as the articles of incorporation and bylaws may specify.

(b)(1) Credit union organizations, other than central credit unions, shall be limited to:

(A) Groups having a common bond of occupation;

(B) Associations;

(C) Residents within a well-defined neighborhood, community, or rural district;

(D) Employees of a common employer, or an affiliate of a subsidiary of a common employer;

(E) Members of a bona fide fraternal, religious, cooperative, labor, rural, educational, or similar organization; and

(F)(i) Members of the immediate family of such persons.

(ii) "Members of the immediate family" shall include the wife, husband, children, parents, grandparents, and grandchildren of a member.

(2) Societies and associations composed of individuals who are eligible for membership may be admitted to membership in the same manner and under the same conditions as individuals but may not borrow in excess of their shareholdings.

(c) Membership in credit unions organized as central credit unions shall be limited to:

(1) Credit unions organized under this chapter and federally chartered credit unions located in Arkansas;

(2) A member of a credit union organized under this chapter or a federally chartered credit union located in Arkansas, if the credit union of which he or she is a member agrees to the membership and will

provide an affidavit that at the time the member applies for membership in a central credit union the member has:

(A) Reached the loan limit at his or her own credit union, and the credit union of which he or she is a member will substantiate in writing the member's loan credibility under such rules and forms as the State Credit Union Supervisor shall prescribe;

(B) Reached the maximum share limit at his or her own credit union; or

(C) Reached the maximum share limit at his or her own credit union which is covered by life savings insurance, and the central credit union also provides life savings insurance;

(3)(A) With the approval of the supervisor, employees of an employer with insufficient employees to form and conduct the affairs of a separate credit union and persons in the field of membership of liquidating credit unions and the immediate families of those persons.

(B) In making his or her determination under this subsection, the supervisor may disregard the common bond requirements of this chapter if he or she finds that the affiliation would benefit the members and be consistent with the purposes of this chapter.

(C) If the membership of a liquidating credit union is seeking to merge with a central credit union under the provisions of this subdivision (c)(3), all provisions of § 23-35-701 shall apply except for the common bond requirements.

(D) Each employer or liquidating credit union whose employees or members are approved as members of a central credit union shall be specifically named in the common bond section of the bylaws;

(4) Employees of the credit union;

(5) Current members of the credit union if it is converting to a central credit union; and

(6) Employees of the Arkansas Credit Union League.

History. Acts 1971, No. 132, § 7; 1975, No. 530, §§ 5, 6; 1979, No. 206, § 2; A.S.A. 1947, § 67-907.

23-35-402. Nonliability of members.

The members of the credit union shall not be personally or individually liable for the payment of debts of the credit union.

History. Acts 1971, No. 132, § 19; A.S.A. 1947, § 67-919.

23-35-403. Meetings — Voting.

(a) The annual meeting and special meetings shall be held at the time, place, and in the manner indicated in the bylaws.

(b) At all meetings each member shall have but one (1) vote, irrespective of his or her shareholdings. No member may vote by proxy,

but a society or association having membership in the corporation may be represented and vote by one (1) of its members or shareholders, provided that person has been duly authorized by the governing board of the society or association.

History. Acts 1971, No. 132, § 10; A.S.A. 1947, § 67-910.

23-35-404. Expulsion of members.

(a) A member of a credit union may be expelled by the board of directors of the credit union, but only after he or she has been given an opportunity to be heard regarding the purpose of the expulsion. A written notice of this hearing, setting forth the time, place, and date for the meeting, shall be forwarded to the member by the board together with the charges which serve as the basis for the expulsion.

(b) The member may be expelled for:

- (1) Failure to meet the conditions of his or her membership;
- (2) Failure to carry out his or her obligations to the credit union;
- (3) Conviction of a felony;
- (4) Neglect or refusal to comply with the laws and bylaws under which the credit union operates;
- (5) Habitual neglect to pay obligations;
- (6) Insolvency; or
- (7) Bankruptcy.

(c) If the board votes to expel the member, he or she shall remain liable for any sums owed to the credit union for loans or other purposes.

(d) The credit union may require sixty (60) days' written notice to withdraw shares or deposits by the member, as funds become available.

History. Acts 1971, No. 132, § 8; A.S.A. 1947, § 67-908.

SUBCHAPTER 5 — SHARES

SECTION.	SECTION.
23-35-501. Shares generally — Liens on shares.	23-35-503. Shares issued in trust.
23-35-502. Shares in name of minor.	23-35-504. Joint tenancy in shares and accounts.

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1182, § 6: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 530 of 1975 amending various sections of Act 132 of 1971 was inconsistent and contained errors; in addition, due to the unique loan services offered by a credit union to its members, it is in the best interest of the citizens of the

State of Arkansas to maintain the stability of credit unions; that for such continued stability to be assured, it is necessary to protect the rights and proprietary interests of each member in each credit union so as to encourage continued investment and insure that no loss will be incurred by each depositor; that Federal insurance of depositor accounts in State-chartered credit unions is not presently mandatory

but that it is in the public interest and for the protection of depositors that each State-chartered credit union have Federal insurance of accounts; that it is in the best interest of the public and each State-chartered credit union that a reasonable time be allowed in which each State-chartered credit union should obtain Federal insurance of depositors accounts and that this Act should be given effect immediately to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 936, § 22: Emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Credit Union Act does not provide for sufficient capitalization for newly chartered credit unions and does not give credit unions sufficient

real estate lending authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

Acts 1987, No. 995, § 6: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1182 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 22 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 31 et seq.

23-35-501. Shares generally — Liens on shares.

(a) A "share" is a term applied to each five dollars (\$5.00), but not more than twenty-five dollars (\$25.00), standing to the share account of a member.

(b) The shares of stock of a credit union shall all be common shares of one (1) class and shall have a par value of five-dollar multiples of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) per share.

(c) No certificate shall be issued to denote ownership of a share in a credit union.

(d) Shares may be subscribed, paid for, and transferred in such manner as the bylaws may prescribe.

(e) The credit union shall have and may exercise a lien on the shares of any member for any sum due the credit union from the member or for any loan endorsed by him or her .

(f) When the share balance of a member is reduced to less than one (1) fully paid share by the member's action and remains below that amount for a period of one (1) year or longer after the member has received actual notice of that fact, it may be absorbed by a late or service charge upon authorization of the board of directors of the credit union.

History. Acts 1971, No. 132, § 19; 1975 (Extended Sess., 1976), 1182, § 3; 1985, No. 936, § 13; A.S.A. 1947, § 67-919; reen. Acts 1987, No. 995, § 3.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 995, § 3. Acts

1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

23-35-502. Shares in name of minor.

(a) Shares may be issued in the name of a minor, if permitted by the articles of incorporation. These shares may be withdrawn by the minor, and payments made on the withdrawals shall be valid.

(b) No minor under sixteen (16) years of age shall be entitled to vote in the meetings of the members either personally or through his or her parent or guardian, nor may he or she become a director or committee member until he or she shall have reached legal age.

History. Acts 1971, No. 132, § 22; A.S.A. 1947, § 67-922.

23-35-503. Shares issued in trust.

(a) Shares may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his or her own right, may be permitted to vote, obtain loans, hold office, or be required to pay an entrance fee.

(b) Payment of part or all of the shares issued in trust to the member shall, to the extent of the payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of the payment.

(c) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written evidence of the existence or terms of any trust, the shares and any dividends or interest thereon shall be paid to the beneficiary.

History. Acts 1971, No. 132, § 23; A.S.A. 1947, § 67-923.

23-35-504. Joint tenancy in shares and accounts.

A member may designate any person to hold shares and thrift club accounts with him or her in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office. Payment of part or all of the joint accounts to any of the joint tenants shall, to the extent of the payment, discharge the liability to all.

History. Acts 1971, No. 132, § 21; A.S.A. 1947, § 67-921.

SUBCHAPTER 6 — OPERATION

SECTION.

- 23-35-601. Powers generally.
- 23-35-602. Christmas and other thrift clubs.
- 23-35-603. Loans and extensions of credit in advance.
- 23-35-604. Investment of funds.
- 23-35-605. Reserves.
- 23-35-606. Inability to contact members — Transfer of funds to reserves.

SECTION.

- 23-35-607. Dividends.
- 23-35-608. Reduction of assets.
- 23-35-609. Fiscal year.
- 23-35-610. Establishment of subsidiary offices.
- 23-35-611. Records.

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1182, § 6: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 530 of 1975 amending various sections of Act 132 of 1971 was inconsistent and contained errors; in addition, due to the unique loan services offered by a credit union to its members, it is in the best interest of the citizens of the State of Arkansas to maintain the stability of credit unions; that for such continued stability to be assured, it is necessary to protect the rights and proprietary interests of each member in each credit union so as to encourage continued investment and insure that no loss will be incurred by each depositor; that Federal insurance of depositor accounts in State-chartered credit unions is not presently mandatory but that it is in the public interest and for the protection of depositors that each State-chartered credit union have Federal insurance of accounts; that it is in the best interest of the public and each State-chartered credit union that a reasonable time be allowed in which each State-chartered credit union should obtain Federal insurance of depositors accounts and that this Act should be given effect immediately to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 206, § 9: Feb. 23, 1979. Emergency clause provided: "It has been found and determined by the General Assembly that federal associations doing

business in this State now have an unfair competitive advantage over credit unions chartered by this State and that it is imperative to immediately remove such unfair competitive advantage and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its passage and approval."

Acts 1985, No. 936, § 22: Emergency clause failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Credit Union Act does not provide for sufficient capitalization for newly chartered credit unions and does not give credit unions sufficient real estate lending authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

Acts 1987, No. 995, § 6: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1182 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval.”

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 42 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 66 et seq.

23-35-601. Powers generally.

A credit union shall have power to:

- (1) Make contracts;
- (2) Sue and be sued in the name of the credit union;
- (3) Adopt and use a common seal and alter it at pleasure;
- (4) Purchase, hold, and dispose of property necessary or incidental to its operations;
- (5) Require the payment of an entrance or membership fee by any applicant admitted to membership;
- (6) Receive from its members payments on shares, which shall include the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership;
- (7) Lend its funds to its members as provided in this chapter;
- (8) Purchase insurance on the lives of its members in an amount equal to their respective share and loan balances or any or all of them;
- (9) Borrow from any source in an aggregate amount not exceeding sixty percent (60%) of the share balances;
- (10) Invest surplus funds as provided in this chapter;
- (11) Make deposits in checking or similar type of accounts in state-chartered and federally chartered banks, savings and loan associations, savings banks, and credit unions, which accounts are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation [abolished], or the National Credit Union Administration;
- (12) Hold membership in other credit unions organized under this chapter or other acts, in the Arkansas Credit Union League, and in other organizations composed of credit unions;
- (13) Declare dividends as provided in this chapter;
- (14) Impress a lien upon the shares and accumulation of dividends and interest of any member to the extent of any loans made to him or her directly or indirectly, or on which he or she is surety, and for any dues or charges payable by him or her;
- (15) Change its place of business in Arkansas with written notice to the State Credit Union Supervisor; and
- (16) Exercise the powers granted corporations organized under the laws of Arkansas and such additional incidental powers as may be necessary or requisite to enable it to promote and effectively carry on its purposes.

History. Acts 1971, No. 132, § 5; 1975, No. 530, §§ 3, 4; 1985, No. 936, § 2; A.S.A. 1947, § 67-905.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

23-35-602. Christmas and other thrift clubs.

Christmas clubs, vacation clubs, and other thrift clubs, if provided for the use of members, shall be operated in accordance with such rules and regulations as the board of directors of the credit union may prescribe.

History. Acts 1971, No. 132, § 20; A.S.A. 1947, § 67-920.

23-35-603. Loans and extensions of credit in advance.

(a) A credit union may loan to members for a provident or productive purpose and upon such security as the bylaws may provide and as the credit committee or loan officer shall approve.

(b)(1) No loan shall bear an interest rate to exceed the highest lawful rate permitted under the Constitution of the State of Arkansas.

(2) No credit union shall charge the borrower anything of value in connection or in association with the loan, other than repayment of the unpaid principal balance and interest. However, on loans secured by real estate a credit union may charge a loan origination fee not to exceed three percent (3%) of the original principal balance of the loan. A borrower may be charged for the cost of appraisals and credit investigations. If permitted by the bylaws, the borrowing members may be charged for the cost of the filing fees on security instruments in connection with the transaction.

(c) Every application for a loan shall be made upon a form, which the credit committee has prescribed and the board of directors of the credit union has approved, which shall state at least the purpose for which the loan is desired, the security, if any, offered, the amount of the loan being applied for, and any other information which may be required to determine the financial ability of the applicant to repay the loan.

(d) Every loan shall be evidenced by a written instrument.

(e)(1) No unsecured loan shall be made to any member in an aggregate amount in excess of three thousand dollars (\$3,000).

(2) No secured loan shall be made to any member in an aggregate amount in excess of ten percent (10%) of the credit union's total assets.

(3) No loan shall be made to any member if, in the aggregate, the balances of the secured and unsecured loans outstanding to that member exceed ten percent (10%) of the total assets of the credit union.

(4) Secured and unsecured loans made against joint accounts shall be included in the aggregate and shall not be allocated to each joint tenant in determining the loan amounts set forth in this subsection.

(5) If the State Credit Union Supervisor in his or her discretion determines that the ten percent (10%) limit as set out in this subsection

is operating to the detriment of a credit union, he or she may by rule or order reduce the ten percent (10%) limit.

(f)(1) No loan shall be made unless it has been approved by a loan officer or has received approval of a majority of the members of the credit committee in conformity with the other provisions of this chapter.

(2) A loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds six thousand dollars (\$6,000) plus pledged shares shall be approved by a majority of the credit committee and a majority of the board members present. No member of the board or the credit committee may take part in the consideration of his or her loan application.

(g)(1) Loans may be granted to members of the credit union, secured by a first or second mortgage on real estate. The aggregate of the loans shall not exceed eighty percent (80%) of the market value of the real estate which is set forth in an appraisal prepared by an independent qualified real estate appraiser. The loans shall also provide for substantially equal monthly payments for insurance premiums and taxes assessed against the security. The total outstanding balance of all first mortgage loans on real estate shall not exceed thirty percent (30%) of the outstanding shares of the credit union.

(2) For purposes of this subsection and applicable rules:

(A) "Appraisal" means an objective estimate of value based upon a physical examination and evaluation which shall disclose the market value of the security offered by use of the market sales approach which shall be supported by an analysis of comparable properties in the immediate area. The market value shall also be supported by use of the cost and income appraisal methods if conditions warrant and shall include documentation of the purchase price of the property offered as security;

(B) "Independent qualified real estate appraiser" means a person who is experienced in the appraisal of the type of real estate being offered as security, who is actively engaged in real estate appraisal work and whose qualifications are demonstrated by membership in a national professional appraisal organization, or who is licensed to appraise in the state in which the real estate is located, or who is acceptable as an appraiser by an insuring or guaranteeing agency of the federal or state government and who has no present or contemplated future interest in the property being appraised; and

(C) "Market value" means the highest price which real property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

(h)(1) A credit union may make any loan insured by any federal program on terms set out in the applicable federal legislation, and that insurance shall be deemed adequate security.

(2)(A) In addition to generally accepted types of security, the endorsement of a note by a guarantor or assignment of shares or wages,

in a manner consistent with the laws of Arkansas, shall be deemed security within the meaning of this chapter.

(B) For purposes of this subsection and applicable rules a “guarantor” means one who enters into an enforceable guaranty agreement and provides current financial statements showing a net worth free of homestead and subject to execution in an amount at least equal to the amount of the loan.

(C) The guaranty agreement and the financial statements must be presented to the credit committee of the credit union for consideration and then placed in the file of the borrower.

(3) The adequacy of all securities shall be within the determination of the credit committee or loan officer, subject to the provisions of this chapter and the bylaws.

(i) A member may receive a loan in installments or in one (1) sum, and he or she may pay the whole or any part of this loan on any day in which the credit union office is open for business.

(j) The credit committee may approve an extension of credit in advance, upon its own motion or upon application by a member, and loans may be granted to the member within the limits of the extension of credit. When an extension of credit has been approved, applications for loans need no further consideration as long as the aggregate obligation does not exceed the limits of the extension of credit. The credit committee shall review all extensions of credit at least once a year, and any extension of credit shall expire if the member becomes more than ninety (90) days delinquent in his or her obligations to the credit union.

(k) No director, member of the credit or supervisory audit committee, or credit union employee shall cosign, endorse, or act as a guarantor for any borrower from the credit union.

History. Acts 1971, No. 132, § 16; 1975, No. 530, §§ 13-15; 1975 (Extended Sess., 1976), No. 1182, § 2; 1979, No. 206, § 5; 1985, No. 936, §§ 8-11; A.S.A. 1947, § 67-916; Acts 1987, No. 750, § 1; reen. 1987, No. 995, § 2.

A.C.R.C. Notes. This section was reen-

acted by Acts 1987, No. 995, § 2. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

23-35-604. Investment of funds.

Funds not used in loans to members may be invested:

(1) In capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided that the membership or stockholdings, as the case may be, of the agency or association are confined or restricted to credit unions or organizations of credit unions and provided that the purposes for which the agency or association is organized are designed to service or otherwise assist credit union operations;

(2) In obligations of the State of Arkansas or any subdivision thereof;

(3) In obligations of the United States or securities fully guaranteed as to principal and interest thereby;

(4) In shares of a cooperative society organized under local or national cooperative laws, in an amount not exceeding ten percent (10%) of the shares and surplus of the credit union;

(5) In any investment legal for fiduciaries, savings banks, or trust companies in Arkansas;

(6) In loans to other credit unions, in an amount not to exceed thirty-three and one-third percent ($33\frac{1}{3}\%$) of the shares and unimpaired surplus of the lending credit union; and

(7) In an aggregate amount not exceeding twenty-five percent (25%) of the allocations to the reserve fund, in any agency or association of the type described in subdivision (1) of this section, provided the purposes of any such agency or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations.

History. Acts 1971, No. 132, § 25;
A.S.A. 1947, § 67-925.

23-35-605. Reserves.

(a) At the end of each accounting period, the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this chapter, sums in accordance with the following schedule:

(1) A credit union in operation for more than four (4) years and having assets of five hundred thousand dollars (\$500,000) or more shall set aside:

(A) Ten percent (10%) of gross income until the regular reserve shall equal four percent (4%) of the total of outstanding loans and risk assets; then

(B) Five percent (5%) of gross income until the regular reserve shall equal six percent (6%) of the total of outstanding loans and risk assets;

(2) A credit union in operation less than four (4) years or having assets of less than five hundred thousand dollars (\$500,000) shall set aside ten percent (10%) of gross income until the regular reserve shall equal seven and one-half percent ($7\frac{1}{2}\%$) of the total of outstanding loans and risk assets; and

(3) Whenever the regular reserve falls below the stated percent of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.

(b) The State Credit Union Supervisor may decrease the reserve requirement set forth in subsection (a) of this section when, in his or her opinion, a decrease is necessary or desirable. The supervisor may also

require special reserves to protect the interests of members either by regulation or for an individual credit union in any special case.

(c) The reserve fund shall belong to the credit union and shall be used to meet all losses from uncollectable loans and shall not be distributed except on liquidation of the credit union or in accordance with a plan approved or ordered by the supervisor.

History. Acts 1971, No. 132, § 26;
1979, No. 206, § 7; 1985, No. 936, § 15;
A.S.A. 1947, § 67-926.

23-35-606. Inability to contact members — Transfer of funds to reserves.

(a)(1) If a credit union is unable to contact a member, beneficiary, or other person by first class mail at the last address shown on the records of the credit union, and if such inability continues for a period of more than three (3) years, then all shares, accounts, dividends, interest, and other sums due to or standing in the name of the member, beneficiary, or other person may, by action of the board of directors of the credit union, be credited to accounts payable, and thereafter no dividends or interest will accrue thereto.

(2) The member shall have the right to reclaim any such sums by proper judicial proceedings commenced within an additional four (4) years after the action by the board.

(b) This section shall not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two (2) or more persons unless the credit union is unable to contact any of those persons in the manner and during the period specified in this section.

(c) Nothing contained in this section shall exempt a credit union from the Arkansas Uniform Unclaimed Property Act, § 18-28-201 et seq.

History. Acts 1971, No. 132, § 24; referred to in this section, was repealed,
1975, No. 530, § 16; 1985, No. 936, § 14; with the exception of what will be current
A.S.A. 1947, § 67-924. § 18-28-230, and replaced by the enact-

A.C.R.C. Notes. The former Uniform ment of the Unclaimed Property Act by
Disposition of Unclaimed Property Act, Acts 1999, No. 850.

23-35-607. Dividends.

(a) At such intervals as the board of directors of the credit union may authorize and after provision for required reserves, the board may declare, pursuant to such regulations as may be issued by the State Credit Union Supervisor, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates.

(b)(1) Dividend credit may be accrued on various types of shares and share certificates as authorized by the board.

(2) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first fifteen (15) days of that month.

(3) No dividends shall be paid on shares which are withdrawn during the dividend period.

(c)(1) No dividend shall be declared or paid at a time when the credit union is insolvent or when the payments thereof would render the credit union insolvent.

(2) Insolvency shall be determined by the supervisor to have occurred when:

(A) A credit union cannot meet its obligations as they come due in the normal course of business; or

(B) Considering the credit union's assets and liabilities, the net recoverable assets, if made immediately available, would not be sufficient to discharge the credit union's obligations to its creditors and members.

(3) As used in this subsection, "net recoverable assets" means all assets of the credit union as reflected in a balance sheet which has been prepared using generally accepted accounting principles less the following:

(A) Any uncollectible or unrecoverable asset;

(B) Ten percent (10%) of the unpaid balances of all loans delinquent more than two (2) months but less than six (6) months, twenty-five percent (25%) of the unpaid balances of all loans delinquent from six (6) months to less than twelve (12) months, eighty percent (80%) of the unpaid balances of loans delinquent twelve (12) months but less than sixteen (16) months, and one hundred percent (100%) of the unpaid balances of all loans delinquent sixteen (16) months or more.

(d) Each individual who has met the requirements for membership shall be entitled to, and paid, a dividend on his or her fully paid shares as declared by the board.

History. Acts 1971, No. 132, § 27; 1985, No. 936, §§ 16-18; A.S.A. 1947, 1975, No. 530, § 17; 1979, No. 206, § 8; § 67-927.

23-35-608. Reduction of assets.

When the losses of a credit union resulting from a depreciation in value of its loans or investments, or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members. If thereafter the credit union shall realize from its assets a greater amount than was fixed by the order of reduction, the excess shall be divided among the shareholders whose assets were reduced, but only to the extent of the reduction.

History. Acts 1971, No. 132, § 28; A.S.A. 1947, § 67-928.

23-35-609. Fiscal year.

The fiscal year of all credit unions subject to the provisions of this chapter shall end on December 31.

History. Acts 1971, No. 132, § 9; A.S.A. 1947, § 67-909.

23-35-610. Establishment of subsidiary offices.

(a) A credit union shall have the power to establish offices at locations other than its main office if the maintenance of those offices is reasonably necessary to furnish services to its membership. No additional offices shall be established to serve persons who are not entitled to membership, as defined in the common bond provision of the articles of incorporation, and who would not be entitled to services of the credit union at its main office.

(b) All books of account shall be maintained at the main office of the credit union.

(c) The State Credit Union Supervisor shall grant prior written approval for the establishment of subsidiary offices. He or she shall have the authority to issue notice and hold a public hearing to determine if the establishment of the subsidiary office or offices is necessary and in the best interests of the credit union.

History. Acts 1971, No. 132, § 39; A.S.A. 1947, § 67-939.

23-35-611. Records.

(a) All credit union records shall be kept for a period of five (5) years from the date of making them or from the date of the last entry thereon.

(b) No credit union shall be required to make receipt for payment except as may be provided in the bylaws, nor shall it be necessary to endorse a note showing date of payments or balance due.

History. Acts 1971, No. 132, § 32; A.S.A. 1947, § 67-932.

SUBCHAPTER 7 — MERGER, CONVERSION, OR DISSOLUTION

SECTION.

23-35-701. Merger.

23-35-702. Conversion to or from federal credit union.

23-35-703. Voluntary dissolution.

SECTION.

23-35-704. Suspension of operations — Involuntary liquidation.

23-35-705. Procedure for liquidation or dissolution.

Effective Dates. Acts 1985, No. 936, § 22: Emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly

that the Credit Union Act does not provide for sufficient capitalization for newly chartered credit unions and does not give credit unions sufficient real estate lending

authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval.”

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., §§ 13-15 and § 98 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 129 et seq.

23-35-701. Merger.

(a) Any credit union other than a central credit union may, with the approval of the State Credit Union Supervisor, merge with any other credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of each credit union present at the meetings of members duly called for that purpose. The supervisor may waive the common bond requirement of this chapter for merging credit unions if he or she determines that good cause has been shown for waiving the requirement and that the merger is consistent with the purposes of this chapter.

(b)(1) After agreement by the directors and approval by the members of each credit union, the president and secretary of each credit union shall execute a certificate of merger, which shall set forth all of the following:

(A) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(B) The vote in favor of adoption of the plan;

(C) A copy of the resolution or other action by which the plan was agreed upon;

(D) The time and place of the meeting of the members at which the plan agreed upon was approved;

(E) The vote by which the plan was approved by the members; and

(F) Such other provisions as set by rule or order of the supervisor.

(2) The certificates and a copy of the plan of merger agreed upon shall be forwarded to the supervisor and, if approved, returned to the merging credit unions.

(c) Upon any such merger so effected, all property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer. All debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected.

(d) This section shall be construed, whenever possible, to permit a credit union chartered under any other act to merge with one subject to the provisions of this chapter.

History. Acts 1971, No. 132, § 29; 1975, No. 530, § 18; A.S.A. 1947, § 67-929.

23-35-702. Conversion to or from federal credit union.

The State Credit Union Supervisor shall issue regulations to permit the conversion of a credit union operating under this chapter to a federal credit union and the conversion of a federal credit union to a credit union operating under this chapter.

History. Acts 1971, No. 132, § 36; A.S.A. 1947, § 67-936.

23-35-703. Voluntary dissolution.

A credit union may elect to dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of directors of the credit union shall adopt a resolution recommending that the credit union be dissolved voluntarily and directing that the question of dissolution be submitted to a regular or special meeting of the members;

(2) After the adoption of the resolution to voluntarily dissolve, no receipts shall be accepted nor withdrawals permitted from its share or deposit accounts, nor shall any loans be made nor any dividends declared nor paid pending final determination by its membership on the voluntary dissolution;

(3) At a meeting called to consider the matter, a majority of the entire membership may vote to dissolve the credit union, provided a notice of the meeting was mailed to the members of the credit union at least ten (10) days prior thereto. Any member not present at the meeting may, within the next twenty (20) days, vote in favor of dissolution by signing a statement in a form approved by the State Credit Union Supervisor, and the vote shall have the same force and effect as if cast at the meeting;

(4) The credit union shall thereupon immediately cease to do business, except for the purpose of liquidation; and

(5) The president and the secretary of the credit union shall, within five (5) days following the meeting, notify the supervisor of intention to liquidate and shall include a list of the names and addresses of the directors and officers of the credit union.

History. Acts 1971, No. 132, § 38; A.S.A. 1947, § 67-938.

23-35-704. Suspension of operations — Involuntary liquidation.

(a) If it shall appear that any credit union is bankrupt or insolvent, that it has willfully violated any of the provisions of this chapter, or that it is operating in an unsafe or unsound manner, the State Credit Union Supervisor shall issue an order temporarily suspending the credit

union's operations. The board of directors of the credit union shall be given notice by registered mail of the suspension, which notice shall include a list of the reasons for the suspension and a list of the specific violations of this chapter.

(b) Upon receipt of the suspension notice, the credit union shall immediately cease all operations.

(c) The directors of the credit union shall then file a reply to the suspension notice with the supervisor within fifteen (15) days. They may request a hearing to present a plan of corrective actions proposed if they desire to continue operations, or they may request that the credit union be declared insolvent and that a liquidating agent be appointed.

(d)(1) If the credit union fails to answer the suspension notice or request a hearing, the supervisor may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union in accordance with § 23-35-705.

(2)(A) If the supervisor, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations, the supervisor may issue a notice of involuntary liquidation and appoint a liquidating agent.

(B) The credit union may request a stay of execution of this action by appealing to the circuit court of the jurisdiction in which the credit union is located.

(C) Involuntary liquidation may not be ordered prior to following the suspension procedures outlined in this section.

History. Acts 1971, No. 132, §§ 37, 38;
A.S.A. 1947, §§ 67-937, 67-938.

23-35-705. Procedure for liquidation or dissolution.

(a) The credit union shall continue in existence for the purposes of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and it may sue and be sued for the purpose of enforcing its debts and obligations until its affairs are fully adjusted.

(b) The board of directors of the credit union, or in the case of involuntary dissolution the liquidating agent, shall, after applying each member's share or deposit account against any loan or debt owed the credit union by that member, use the assets of the credit union to pay:

(1) Expenses incidental to liquidation, including any surety bond that may be required;

(2) Any liability due nonmembers; and

(3) Savings club accounts as provided in this chapter.

(c) Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted or ordered.

(d) As soon as the board or liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, they shall

execute a certificate of dissolution on a form prescribed by the State Credit Union Supervisor and file the certificate with him or her.

(e) The credit union shall be subject to examination by the supervisor in accordance with its schedules.

History. Acts 1971, No. 132, § 38;
1985, No. 936 § 19; A.S.A. 1947, § 67-938.

SUBCHAPTER 8 — PROHIBITED PRACTICES

SECTION.

- 23-35-801. Misleading conduct or use of words "credit union".
23-35-802. Commission or compensation for sale of shares, grant of loans, etc.
23-35-803. Prohibited actions by officers, directors, agents, etc.

SECTION.

- 23-35-804. Compensation of directors or committee members.
23-35-805. False reports about credit union.

Effective Dates. Acts 1979, No. 206, § 9: Feb. 23, 1979. Emergency clause provided: "It has been found and determined by the General Assembly that federal associations doing business in this State now have an unfair competitive advantage over credit unions chartered by this State and that it is imperative to immediately remove such unfair competitive advantage and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, safety and welfare,

shall take effect and be in force from the date of its passage and approval."

Acts 1985, No. 936, § 22: Emergency clause failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Credit Union Act does not provide for sufficient capitalization for newly chartered credit unions and does not give credit unions sufficient real estate lending authority. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval."

23-35-801. Misleading conduct or use of words "credit union".

(a) It is unlawful for any person, corporation, copartnership, or association except a credit union subject to the provisions of this chapter or the Federal Credit Union Act to:

(1) Use a name or title containing the words "credit union" or any derivation thereof;

(2) Represent themselves in their advertising as a credit union; or

(3) Otherwise conduct business as a credit union.

(b) Any person who willfully violates this section shall be guilty of a Class D felony and may be permanently enjoined from such conduct.

(c) The State Credit Union Supervisor may institute and prosecute actions in his or her own name in the circuit court of any county having

jurisdiction, to seek any judicial remedy necessary to enforce the provisions of this section.

History. Acts 1971, No. 132, § 4; A.S.A. 1947, § 67-904; Acts 2005, No. 1994, § 433.

U.S. Code. The Federal Credit Union Act, referred to in this section, is codified as 12 U.S.C. § 1751 et seq.

23-35-802. Commission or compensation for sale of shares, grant of loans, etc.

No credit union shall pay or receive any commission or compensation for securing members, for the sale of its shares, or for the granting of loans to its members or to other credit unions except for loan origination fees which are specifically provided for in § 23-35-603.

History. Acts 1971, No. 132, § 6; 1979, No. 206, § 1; 1985, No. 936, § 4; A.S.A. 1947, § 67-906.

23-35-803. Prohibited actions by officers, directors, agents, etc.

(a)(1) It is unlawful for any officer, director, committee member, agent, employee, or loan officer of a credit union to permit a loan to be made to a nonmember or to participate in a loan to a nonmember.

(2) It is unlawful for any corporation, officer, director, member, committee member, agent, employee, or loan officer of a credit union to receive either directly or indirectly the proceeds of a credit union loan made in the name of another person, corporation, or credit union with the purpose to avoid compliance with this chapter.

(3) Any person who willfully violates this subsection shall be guilty of a Class A misdemeanor and shall be primarily liable to the credit union for the amount thus illegally loaned.

(4) The illegality of such a loan shall be no defense in any action of the credit union to recover on the loan.

(b)(1) It is unlawful for any officer, director, committee member, agent, or employee of a credit union to make or subscribe to false entries or exhibit a false or fictitious paper, instrument, or security to a person authorized to examine the credit union books and records.

(2) Any person who willfully violates this subsection shall be guilty of a Class D felony.

(c)(1) It is unlawful for any officer, director, committee member, agent, or employee of a credit union to receive payments on shares knowing the credit union is insolvent.

(2) Any person who willfully violates this subsection shall be guilty of a Class C felony.

History. Acts 1971, No. 132, § 14; 1975, No. 530, § 11; A.S.A. 1947, § 67-914; Acts 2005, No. 1994, § 444.

23-35-804. Compensation of directors or committee members.

(a) With the exception of the treasurer of the credit union whom the board of directors of the credit union has specifically appointed or contracted to actually work in the credit union, no director or member of a credit committee or supervisory committee may receive compensation for performing the duties or responsibilities of the board or committee position to which the person was elected or appointed.

(b) For purposes of this section, the term "compensation" specifically excludes reasonable and proper costs incurred by or on behalf of an official whether on a reimbursement basis or paid directly by the credit union in carrying out the responsibilities of the position.

History. Acts 1971, No. 132, § 6; 1979, No. 206, § 1; 1985, No. 936, § 3; A.S.A. 1947, § 67-906.

23-35-805. False reports about credit union.

(a) It is unlawful for any person, firm, corporation, or association to spread false reports about the management or finances of any credit union.

(b) Any person who willfully violates this section shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or shall be imprisoned in the state penitentiary for not less than thirty (30) days nor more than two (2) years, or both.

History. Acts 1971, No. 132, § 34; A.S.A. 1947, § 67-934.

CHAPTER 36**INDUSTRIAL LOAN INSTITUTIONS****SECTION.**

- 23-36-101. Definition.
- 23-36-102. Stock ownership.
- 23-36-103. Directors.
- 23-36-104. Corporate title.
- 23-36-105. Supervision by Bank Commissioner.
- 23-36-106. Statement on call.
- 23-36-107. Examinations and fees.
- 23-36-108. Powers generally.
- 23-36-109. Loan limits.
- 23-36-110. Loans insured by federal government.

SECTION.

- 23-36-111. Prohibited loans.
- 23-36-112. Late charge for default in payment.
- 23-36-113. Reserves.
- 23-36-114. Deposit of funds.
- 23-36-115. Dividends.
- 23-36-116. Authority of Bank Commissioner to take charge.
- 23-36-117. Classification of creditors — Payment of claims.

Publisher's Notes. Acts 1971, Nos. 369 and 734 provided that no industrial loan institutions should be incorporated under this chapter after the effective

dates of the acts but that this chapter should remain unrepealed and in effect for the limited purpose of allowing the Bank Commissioner to regulate preexisting industrial loan institutions. In addition, Acts 1971, No. 734, provided that this chapter would remain unrepealed and in effect for the purpose of enabling those institutions to continue in operation under the provisions of this chapter. Both acts contained effective date provisions which would be invalid under the decisions in *Arkansas Tax Comm'n v. Moore*, 103 Ark. 48, 145 S.W. 199 (1912) and *Cunningham v. Walker*, 198 Ark. 928, 132 S.W.2d 24 (1939); accordingly, both took effect on July 19, 1971.

Effective Dates. Acts 1941, No. 111, § 21: became law without Governor's signature, Mar. 3, 1941. Emergency clause provided: "Whereas, there are not at the present time the necessary laws providing for the proper regulation by the State Bank Commissioner of corporations, firms and individuals operating as industrial loan institutions and such regulation by the State Bank Commissioner is necessary for the preservation of the public peace, health and morals of this state; an emergency is declared to exist and this act shall be and shall become effective from and after its passage."

Acts 1981, No. 580, § 3: Mar. 18, 1981. Emergency clause provided: "It is hereby found that the Depository Institutions De-regulation and Monetary Control Act of 1980 (Public Law 96-221) and interpreta-

tions of the Federal Reserve System will for the first time impose reserve requirements on "industrial loan institutions" which are not members of the Federal Reserve System and will increase reserve requirements for such "industrial loan institutions" substantially above those which are presently required under Arkansas law, the effect of which will be to place "industrial loan institutions" at a great competitive disadvantage, without corresponding public benefits, and may threaten the continued existence of "industrial loan institutions." Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 71, § 3: Feb. 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not provide an adequate procedure for the liquidation of an industrial loan institution; that this Act authorizes the Bank Commissioner to liquidate industrial loan institutions; that until this Act becomes effective there will be no adequate mechanism for providing for such liquidation, and therefore this Act should go into effect immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 9 C.J.S., Banks and Banking, § 1044 et seq.

23-36-101. Definition.

As used in this chapter, unless the context otherwise requires, "industrial loan institution" means any corporation organized under the general corporation laws of this state, which is engaged in lending money, to be paid in weekly, monthly, or other periodical installments or principal sums, as a business. However, this definition shall not be construed to include building and loan associations, commercial banks or savings banks, trust companies, credit unions, pawnbrokers, agri-

cultural or livestock pools, rural credit unions, or farmers cooperative societies.

History. Acts 1941, No. 111, § 1; A.S.A. 1947, § 67-1001.

Publisher's Notes. Acts 1941, No. 111, § 3, provided, in part, that institutions operating prior to March 3, 1941, under authorization of the State Banking Department, could apply, within 30 days

after March 3, 1941, for a certificate of authority to operate under the provisions of this chapter. If the application was approved by the Bank Commissioner, the institution would become an industrial loan institution subject to the provisions of this chapter.

CASE NOTES

Cited: Capital Funds, Inc. v. SEC, 348 F.2d 582 (8th Cir. 1965).

23-36-102. Stock ownership.

At least two-thirds (2/3) of the stock of an industrial loan institution shall be owned by bona fide residents of the State of Arkansas.

History. Acts 1941, No. 111, § 9; A.S.A. 1947, § 67-1009.

23-36-103. Directors.

(a) At least three-fourths (3/4) of the number of directors of any industrial loan institution shall be residents of the county in which the city is located in which an industrial loan institution is organized or becomes active under this chapter.

(b) Every director shall own and hold unencumbered not less than five hundred dollars (\$500) par value of the capital stock of the industrial loan institution.

History. Acts 1941, No. 111, § 9; A.S.A. 1947, § 67-1009.

23-36-104. Corporate title.

(a) Every corporation authorized by the Bank Commissioner to operate pursuant to the provisions of this chapter shall be known as an industrial loan institution and shall use the words "industrial loan institution" as part of its corporate title or in connection with its corporate title.

(b) All persons, firms, associations, and corporations, except those which discharge the burden of proving their authority under the laws of another state or the United States, are prohibited from using in this state, as a portion of or in connection with their office or other place of business, or in reference to themselves on their stationery or in their advertising, any of the words or phrases, alone or in combination with any other word or phrase, "industrial loans", "industrial plan of loans", "industrial lending", or the word "plan" in connection with any system of loaning money which would in any way tend to induce the belief that

the party using it is authorized to engage in business as an industrial loan institution under the provisions of this chapter.

History. Acts 1941, No. 111, §§ 3, 10;
A.S.A. 1947, §§ 67-1003, 67-1010.

CASE NOTES

ANALYSIS

Compliance with Requirements.
Engaging in Banking Business.

Compliance with Requirements.

Evidence was sufficient to support a finding that the company was entitled to a certificate authenticating its existence as an industrial loan company. *Sherman v. Hallmark Loan & Inv. Corp.*, 249 Ark. 964, 462 S.W.2d 840 (1971).

Engaging in Banking Business.

This section creates a clear distinction between industrial loan companies and banks under Arkansas law and merely performing some banking functions does not constitute engaging in the banking business. *Capital Funds, Inc. v. SEC*, 348 F.2d 582 (8th Cir. 1965).

23-36-105. Supervision by Bank Commissioner.

(a) Every institution transacting the business of an industrial loan institution as defined by this chapter, whether as a separate business or in connection with any other business, under the laws of and within this state, shall be subject to the provisions of this chapter and shall be under the supervision of the Bank Commissioner.

(b) The commissioner may make, at any time and from time to time, any examinations of the affairs of securities affiliates or other affiliates of industrial loan institutions which are necessary to disclose fully the relations between the industrial loan institutions and their affiliates and the effect of the regulations promulgated by the commissioner on the affairs of the industrial loan institutions.

(c) The commissioner shall exercise control of and supervision over industrial loan institutions doing business under this chapter. It shall be his or her duty to execute and enforce, through the state bank examiners and any other agents appointed for that purpose, all laws relating to industrial loan institutions as defined by this chapter.

(d) For the more complete and thorough enforcement of the provisions of this chapter, the commissioner is empowered to promulgate any rules, regulations, and instructions, not inconsistent with this chapter, which may, in his or her opinion, be necessary to carry out the provisions of the laws relating to industrial loan institutions as defined in § 23-36-101 and which may be further necessary to ensure safe and conservative management of industrial loan institutions under his or her supervision to provide adequate protection for the interest of creditors, depositors, and stockholders in their relations with the institutions.

(e) All industrial loan institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to industrial loan institutions and all rules,

regulations, and instructions that may be promulgated or issued by the commissioner.

History. Acts 1941, No. 111, § 8; A.S.A. 1947, § 67-1008.

CASE NOTES

Cited: Capital Funds, Inc. v. SEC, 348 F.2d 582 (8th Cir. 1965).

23-36-106. Statement on call.

(a) Every industrial loan institution operating under the supervision of the Bank Commissioner shall make to the commissioner, whenever required by him or her, a statement of its assets and liabilities at the close of business on the day designated, which day shall be prior to the call of the commissioner.

(b) The commissioner shall give no notice to any person whatever of the date on which he or she will call for the statement.

(c) The report shall be verified by the oath of either the president, vice president, cashier, or secretary of the institution, and, in addition thereto, it shall be attested to by not fewer than two (2) directors.

History. Acts 1941, No. 111, § 17; A.S.A. 1947, § 67-1017.

23-36-107. Examinations and fees.

(a)(1) Every industrial loan institution shall pay to the Bank Commissioner, within ten (10) days after notice from the commissioner, in the months of January and July of each year, a fixed fee of fifteen dollars (\$15.00). In addition thereto, the industrial loan institution shall pay the commissioner a sum, ascertained according to the following scale:

(A) A sum equal to one-fiftieth percent (1/50%) of the assets of the industrial loan institution, as shown by the last call report of the condition of the industrial loan institution, up to and including the first two million dollars (\$2,000,000) of its assets, determined as aforesaid; plus

(B) One one-hundredth percent (1/100%) on the next one million dollars (\$1,000,000) of assets, determined as aforesaid; plus

(C) One two-hundredth percent (1/200%) of the next one million dollars (\$1,000,000) of assets, determined as aforesaid; plus

(D) One five-hundredth percent (1/500%) upon all assets, determined as aforesaid, in excess of four million dollars (\$4,000,000).

(2) The minimum amount thus payable shall not be less than thirty dollars (\$30.00).

(b) The commissioner may, at his or her discretion, examine every industrial loan institution in the state two (2) times annually or more often if, in his or her opinion, it is necessary. For any examination made

in excess of two (2), industrial loan institutions so examined shall pay an additional assessment equal to the January assessment of the year in which the excess examination is made.

(c) The assessments provided for in this section may be reduced by the commissioner if they, with other fees received by the State Bank Department, produce a greater sum than is required to pay the expenses of the department. They may be increased if not sufficient in connection with other fees received as aforesaid to defray the expenses of the department.

History. Acts 1941, No. 111, § 16;
A.S.A. 1947, § 67-1016.

23-36-108. Powers generally.

(a) Industrial loan institutions shall be empowered to purchase, sell, discount, or negotiate bonds, notes, or other choses in action and issue, as evidence therefor, investment certificates, contracts, or agreements under any descriptive name. They may bear such interest, if any, as their terms may provide and may require the payment to the industrial loan institution of such amounts, from time to time, as their terms may provide. The industrial loan institution may permit the withdrawal or cancellation of amounts paid upon the bonds, notes, or other choses in action, in whole or in part, from time to time, and may credit amounts thereon upon such conditions as may be set forth therein.

(b) The industrial loan institution shall have the right to lend money upon the collateral deposit of, and the compliance of the borrowers with the terms of, any investment certificate, contract, or agreements issued under subsection (a) of this section.

(c) All industrial loan institutions operating under the provisions of this chapter shall so distinguish their operations and so qualify them as not to perform any of the functions of a commercial bank, savings bank, or trust company, outside of the specific authority provided for their operation under this chapter.

History. Acts 1941, No. 111, §§ 3-5;
A.S.A. 1947, §§ 67-1003 — 67-1005.

CASE NOTES

Engaging in Banking Business.

This section creates a clear distinction between industrial loan companies and banks under Arkansas law and merely performing some banking functions does not constitute engaging in the banking

business. *Capital Funds, Inc. v. SEC*, 348 F.2d 582 (8th Cir. 1965).

Cited: *Commercial Credit Plan, Inc. v. Chandler*, 218 Ark. 966, 239 S.W.2d 1009 (1951); *Capital Funds, Inc. v. SEC*, 348 F.2d 582 (8th Cir. 1965).

23-36-109. Loan limits.

The total liabilities to any industrial loan institution of any person, corporation, company, or firm for money borrowed, including in the liabilities of the company or firm the liabilities of the several members thereof, shall at no time exceed twenty percent (20%) of the actually paid-up capital and surplus of the industrial loan institution. However, the discount of bona fide bills of exchange or acceptances drawn against actually existing values and the discount of commercial or business paper actually owned by the person, corporation, company, or firm negotiating them shall not be considered money so borrowed.

History. Acts 1941, No. 111, § 6; A.S.A. 1947, § 67-1006.

23-36-110. Loans insured by federal government.

(a) Subject to any regulations which the Bank Commissioner finds to be necessary and proper, industrial loan institutions are authorized:

(1) To make loans and advances of credit and purchases of obligations representing loans and advancement of credit which are insured by the Federal Housing Administrator and to obtain such insurance;

(2) To make any loans secured by mortgages on real property which the administrator insures or makes a commitment to insure and to obtain such insurance; and

(3) To purchase, invest in, and dispose of notes or bonds secured by mortgage or deed of trust which the administrator has insured or made a commitment to insure in debentures issued by the administrator or in securities issued by the national mortgage associations.

(b) No law of this state prescribing the nature, amount, or form of security, or requiring security upon which such loans or advances of credit may be made, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans and advances of credit, or purchases made pursuant to subsection (a) of this section.

History. Acts 1941, No. 111, § 14; A.S.A. 1947, § 67-1014.

23-36-111. Prohibited loans.

No industrial loan institution shall make any loans directly or indirectly to its officers or directors or to any employee, nor make any loans on capital stock of its own issue.

History. Acts 1941, No. 111, § 18; A.S.A. 1947, § 67-1018.

23-36-112. Late charge for default in payment.

Industrial loan institutions are authorized under this chapter to impose a late charge of five cents (5¢) for each default of the payment of one dollar (\$1.00), or a fraction thereof, at the time any periodical installment upon a certificate assigned as collateral security for the payment of a loan, under § 23-36-108, after payment becomes due. The late charges shall not be cumulative.

History. Acts 1941, No. 111, § 12;
A.S.A. 1947, § 67-1012.

23-36-113. Reserves.

(a) All industrial loan institutions shall establish, as a reserve against the choses in action, investment certificates, contracts, or agreements, described in § 23-36-108, not less than fifteen percent (15%) of the amount of the indebtedness thus created.

(b)(1) Not less than twenty percent (20%) of this reserve shall be in cash in the actual possession of the industrial loan institution or on demand deposit in approved state or national banks located in Arkansas and insured by the Federal Deposit Insurance Corporation.

(2) The remaining portion of the reserve shall be invested in Treasury bills or certificates of deposit of not more than six (6) months' maturity, in repurchase agreements, in bankers' acceptances, or in federal funds.

(c) However, choses in action, investment certificates, contracts, or agreements issued under § 23-36-108 and held by the industrial loan institution as security for its own loans cannot be considered as an indebtedness for which a reserve must be maintained under this section.

(d) An industrial loan institution shall be given credit against the reserve requirements created as authorized by this chapter for any reserve funds held as required by the laws or regulations of the federal government.

History. Acts 1941, No. 111, § 13; 1981,
No. 580, § 1; A.S.A. 1947, § 67-1013.

23-36-114. Deposit of funds.

No industrial loan institution shall deposit any of its funds in any banking corporation unless the corporation has been designated as a depository by vote of a majority of directors, or of the executive committee, exclusive of any director who is an officer, director, or trustee of the depository so designated, present at any duly called meeting at which a quorum is in attendance.

History. Acts 1941, No. 111, § 7; A.S.A.
1947, § 67-1007.

23-36-115. Dividends.

An industrial loan institution operating under this chapter may, under proper authority from the board of directors of the industrial loan institution, declare a dividend of so much of the net profits of the industrial loan institution, after providing for all expenses, losses, reserves, interest, and taxes accrued or due by the industrial loan institution, as they shall judge expedient. However, before any dividend is declared, not less than one-tenth (1/10) of the net profits of the industrial loan institution for the preceding one-half (1/2) year or for the period covered by the dividend shall be carried to a surplus fund, until the surplus fund shall amount to fifty percent (50%) of the par value of the common stock of the industrial loan institution.

History. Acts 1941, No. 111, § 15;
A.S.A. 1947, § 67-1015.

23-36-116. Authority of Bank Commissioner to take charge.

(a) The Bank Commissioner may forthwith take possession of the business and property of any industrial loan institution to which this chapter is applicable whenever it shall appear that the industrial loan institution:

- (1) Has violated its charter or any laws applicable thereto;
- (2) Is conducting its business in an unauthorized or unsafe manner;
- (3) Is in an unsafe and unsound condition to transact its business;
- (4) Has an impairment of its capital stock;
- (5) Has refused to pay its certificates of indebtedness, investment contracts, or agreements to pay in accordance with the terms upon which the certificates of indebtedness, investment contracts, or agreements to pay were issued;
- (6) Has become otherwise insolvent;
- (7) Has neglected or refused to comply with the terms of a duly issued lawful order of the commissioner; or
- (8) Has refused to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the commissioner, upon proper demand.

(b)(1) On taking charge of the property and affairs of any industrial loan institution, the commissioner shall immediately give notice of that fact to all corporations, firms, individuals, and public or quasi-public bodies holding any of the industrial loan institution's assets.

(2) No corporation, firm, individual, or public or quasi-public body, whether within or without this state, shall have a lien or charge against any of the assets for any payment, advance, or clearance, or for any liability incurred after taking charge.

(3) The commissioner may permit the resumption of business by any industrial loan institution of which charge has previously been taken upon the conditions in each instance as may be approved by him or her. All laws setting forth the contingencies for the commissioner's taking charge of industrial loan institutions are directory and discretionary,

not mandatory. In the exercise in any instance of his or her discretion in respect thereof, the commissioner shall take into consideration and give weight according to his or her best judgment to the various factors involved or to be affected thereby, including:

(A) The interest of the present and prospective depositors of the respective industrial loan institution;

(B) The locality wherein it has its place of business;

(C) Other industrial loan institutions in the same or other localities of this state; and

(D) The local or general economic or financial conditions at the time being prevailing.

(4)(A) Upon taking charge of any industrial loan institution, the commissioner shall immediately be vested at law and in equity with the sole, exclusive, and unconditional ownership and title in himself or herself, his or her successors in office, and assigns of all the property and assets of the industrial loan institution, whether the property and assets are situated within this state or elsewhere.

(B) The ownership and title in the commissioner is to be free from and unaffected by any levy, judgment, attachment, or other lien obtained thereafter as against the property of the industrial loan institution through legal proceedings and free from and unaffected by any equity arising in favor of or obtained by third persons after the commissioner has taken charge, but subject to any and all equities in favor of third persons that have arisen or been obtained as against any of the property or assets prior to the taking charge by the commissioner.

(5)(A) All levies, judgments, attachments, or other liens obtained through legal or equitable proceedings in this state or elsewhere as against any industrial loan institution organized under the laws of this state, or any of its property, at any time within thirty (30) days prior to the taking charge by the commissioner, shall be null and void in case the commissioner takes charge of the property and affairs of the industrial loan institution.

(B) The property affected by such a levy, judgment, attachment, or other liens so obtained shall be immediately wholly discharged and released from the liens and shall pass to the commissioner as a part of the estate of the industrial loan institution.

(C) Nothing contained in this section shall have the effect to impair or destroy the title obtained by the levy, judgment, attachment, or other lien of a bona fide purchaser for value who shall have acquired the levy, judgment, attachment, or other lien without notice or reasonable cause for inquiry of the imminence of the taking charge by the commissioner.

(6)(A) Upon the taking charge of any industrial loan institution, the commissioner shall proceed to:

(i) Liquidate its affairs;

(ii) Institute, maintain, and defend suit and other proceedings in the courts of this state or elsewhere;

(iii) Enforce in this state or elsewhere, if necessary, the liabilities of the stockholders; and

(iv) Upon the order empowered to be made by the circuit court of the county wherein the industrial loan institution had its place of business, sell, compound, or exchange any or all bad or doubtful debts of the estate and, on like order, sell or exchange any or all of the real, personal, or mixed property of the estate in such manner and upon such terms and considerations as to any sale, composition, or exchange as specified in the order.

(B) Any sale shall be public or private as specified in the order for the sale, and the sale or exchange of real property shall be subject to confirmation respectively by the court.

(7)(A) The commissioner, under his or her hand and official seal, may appoint one (1) or more special deputy commissioners as agent or agents to assist him or her in the duty of liquidation and distribution of the assets of any insolvent industrial loan institution.

(B) The certificate of appointment shall be in duplicate, with one (1) copy to be filed in the office of the commissioner and the other copy in the office of the clerk of the circuit court of the county in which the industrial loan institution or trust company was located.

(C) The commissioner may from time to time authorize a special deputy to perform the duties connected with the liquidation and distribution as he or she may deem proper.

(8)(A) The commissioner may employ such counsel and procure expert assistance and advice as may be necessary in the liquidation and distribution of the assets and may retain such of the officers or employees as he or she may deem necessary.

(B) The commissioner shall cause notice to be given by advertisement in such newspapers as he or she may direct, weekly for four (4) consecutive weeks, calling on all persons who may have claims against the estate to present the claim to him or her and make legal proof of the claim at a place and at a time to be fixed by the commissioner in the notice.

(C) If the commissioner doubts the justice or the validity of any claim, he or she may reflect the doubts and serve notice of the rejection upon the claimant either by depositing the notice in the mail or personally. An action upon a claim so reflected must be brought within six (6) months after service.

(D) The commissioner may apply for the declaration of a first dividend to creditors at any time after the expiration of the published notice and of the further ten (10) days' notice to creditors.

History. Acts 1941, No. 111, § 11;
A.S.A. 1947, § 67-1011; Acts 1987, No. 71,
§ 1; 2003, No. 1185, § 264.

23-36-117. Classification of creditors — Payment of claims.

(a) All creditors of an industrial loan institution of which the commissioner has taken charge are classifiable either as secured creditors, prior creditors, or general creditors.

(b)(1) A secured creditor shall be a creditor who has security for his or her debt upon the property of the industrial loan institution of a nature to be assignable under this chapter or who owns a debt for which some endorser, surety, or other person secondarily liable for the industrial loan institution has security upon the industrial loan institution's property to the extent, in both instances, of the value of the security.

(2) The value of the security of a secured creditor shall be determined by converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditor or, in the absence of applicable terms of the agreement by the creditor and the Bank Commissioner, by agreement, arbitration, compromise, or litigation as the circuit court may direct. The expense of the conversions by the creditor and the commissioner shall be borne as the court may direct.

(c)(1) A prior creditor shall be:

(A) An employee, laborer, or clerk of the industrial loan institution, as and to the extent provided by this section;

(B) The commissioner, as to deposits made by him or her in the industrial loan institution as depository for the moneys of another industrial loan institution or bank of which he or she has taken charge, to the extent of the deposits;

(C) A prior creditor who is such by virtue of an act of Congress applicable to the industrial loan institution, as and to the extent provided by that act or to the extent provided in this section;

(D) The owner of a special deposit expressly made as a special deposit in the industrial loan institution, evidenced by a writing signed by the industrial loan institution at the time and which it was not permitted to use in the course of its regular business;

(E) The beneficiary of an express trust, distinguished from a constructive trust, a resulting trust, or a trust ex maleficio, of which the industrial loan institution was the trustee and which was evidenced by a writing signed by the industrial loan institution at the time;

(F) The owner of the proceeds of a collection made by the industrial loan institution and not remitted by it, or of which its remittance has not been paid, when the collection was made otherwise than by honoring a check or other order upon the industrial loan institution or by a charge against the account of the depositor of the industrial loan institution, and the collection has had a distinctive identity in the hands of the industrial loan institution, has actually increased its cash assets, and has not resulted in merely shifting the liability upon its books from one of its creditors to another or new creditor; and

(G) The owner of a remittance of the industrial loan institution, the proceeds of a collection made by the industrial loan institution by honoring a check or other upon itself, or by a charge against the account of its depositor, although the collection has not had a distinctive identity in the hands of the industrial loan institution, has not actually increased its cash assets, and has resulted in merely shifting the liability upon its books from one (1) of its creditors to another or new creditor in instances in which the remittance has been presented with due diligence for payment to the industrial loan institution or its drawee and is not paid, and when the instrument collected cannot be returned by the commissioner to the person who had transmitted it to the industrial loan institution for collection, the instrument having been surrendered by the industrial loan institution for collection in such manner prior to the commissioner's taking charge.

(2)(A) It is made the duty of the commissioner to reverse the entries upon the books of the industrial loan institution as to all collections made in all instances where the unpaid remittance has been so presented with due diligence and where the instrument remains in the industrial loan institution unsurrendered.

(B) By this reversal of entries, the instrument shall be deemed to be from its inception unpaid; thereupon, the commissioner shall return the instrument to the person who transmitted it to the industrial loan institution, which return shall be in extinguishment to the extent thereof of the remittance.

(C) It is made unlawful for any officer or agent of any industrial loan institution organized under the laws of this state to surrender any instrument for the purpose of enabling a preference to be secured thereby under any of the provisions of this section, irrespective of any knowledge of or participation in such purpose by the person claiming or receiving the preference.

(3)(A) All prior creditors, as defined in this section, except only employees, laborers, and clerks of the industrial loan institution and the commissioner and prior creditors under an act of Congress, who shall be paid in full out of any assets of the industrial loan institution available after the payment of the expenses of administration, shall have priority to the extent that they respectively may specifically identify their property in its original or traceable form into the hands of the commissioner and, if unable to so identify the property, to the extent that the assets in the hands of the commissioner, in the form of the lowest amount of cash on hand, exclusive of deposits in other industrial loan institutions and all other assets remaining in the industrial loan institution continuously after their respective priorities arose, when necessarily increased by the property, the cash on hand being deemed to have been so increased to the extent of any priorities which may be acquired under subdivision (c)(1)(G) of this section.

(B) If the cash on hand is not sufficient to pay all prior creditors in full, the amount shall be prorated among them.

(4) Beyond the extent of the priority of any prior creditor respectively and insofar as his or her priority to that extent cannot be paid in full, but not otherwise, the creditors shall be general creditors of the industrial loan institution.

(d) All creditors not classified in this section as secured or prior creditors of the industrial loan institution, including the State of Arkansas and any of its subdivisions, shall be general creditors.

(e) Creditors whose claims are unliquidated may liquidate the claims in such manner as the court may direct.

History. Acts 1941, No. 111, § 11; 1987, No. 71, § 1.

CHAPTER 37
SAVINGS AND LOAN ASSOCIATIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. SUPERVISION.
- 3. ORGANIZATION.
- 4. OPERATION GENERALLY.
- 5. SAVINGS ACCOUNTS.
- 6. FOREIGN ASSOCIATIONS.
- 7. CONVERSION, MERGER, ETC.
- 8. REGIONAL SAVINGS AND LOAN ACT OF 1987.

A.C.R.C. Notes. References to “this chapter” in the text of subchapters 1-7 of this chapter may not apply to subchapter 8, which was enacted subsequently.

Publisher’s Notes. By virtue of the definition of “association” in § 23-37-101, most of the provisions of this chapter

govern building and loan associations as well as savings and loan associations. However, many earlier provisions specifically governing building and loan associations have never been repealed and can be found in chapter 38 of this title.

RESEARCH REFERENCES

Ark. L. Rev. Electronic Funds Transfer and “Competitive Equality” A Doctrine That Does Not Compute, 32 Ark. L. Rev. 347.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-37-101. Definitions.
- 23-37-102. Acts 1963, No. 227, controlling.
- 23-37-103. Authority to do business as savings and loan association.
- 23-37-104. Preexisting associations.

SECTION.

- 23-37-105. Arkansas Business Corporation Act applicable to stock savings and loan associations.
- 23-37-106. Federal savings and loan associations.
- 23-37-107. Fees.

SECTION.

23-37-108. Associations subject to gross

receipts and compensating taxes.

Effective Dates. Acts 1963, No. 227, § 65: Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 531, § 16: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that existing laws determining the authority of the Arkansas Savings and Loan Association Board and the Arkansas Savings and Loan Association Supervisor do not sufficiently define such authority and that such condition has greatly handicapped the Board and Supervisor in the proper administration of their duties as to defining in a reasonable manner the time allowed for an association to commence business from the effective date of its grant of authority, as to the fees presently charged by the Board and Supervisor and as to general regulatory matters under the review of the Board and Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 1 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 1 et seq.

23-37-101. Definitions.

(a) As used in this chapter, unless the context otherwise requires:

(1) "Association" means a corporation carrying on the business of a savings and loan association or a building and loan association under a charter issued by the State of Arkansas;

(2) "Board" means the Savings and Loan Association Board [abolished] duly appointed and acting pursuant to the terms of this chapter;

(3) "Broker" means a person, firm, or corporation who acts for or on behalf of any foreign savings and loan association or its agents, in soliciting or receiving applications for or funds for a savings account in any foreign savings and loan association;

(4) "Federal association" means a savings and loan association incorporated pursuant to the Home Owners' Loan Act of 1933, whose principal business office is located within the territorial limits of this state;

(5) "Foreign association" means an association chartered under the laws of another state or a federal association organized in another state, but does not mean a federal association organized in this state;

(6) “Mutual association” means an association that does not have issued an outstanding permanent capital stock and whose affairs are managed by a board of directors elected by the members;

(7) “Savings account” means that part of the savings liability of an association which is credited to a member by reason of the investment of funds in the association other than permanent capital stock;

(8) “Stock association” means an association that has issued an outstanding permanent capital stock and whose affairs are managed by a board of directors elected by the holders of the permanent capital stock; and

(9) “Supervisor” means the Supervisor of Savings and Loan Associations acting and appointed pursuant to the terms of this chapter.

(b) The board may by rule define other terms used in this chapter and by the savings and loan industry.

History. Acts 1963, No. 227, § 1; 1979, No. 361, § 1; A.S.A. 1947, § 67-1801.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to

the Supervisor of Savings and Loan Associations.

U.S. Code. The Home Owners’ Loan Act of 1933, referred to in this section, is codified as 12 U.S.C. § 1461 et seq.

CASE NOTES

Cited: West Helena Sav. & Loan Ass’n v. Federal Home Loan Bank Bd., 553 F.2d 1175 (8th Cir. 1977).

23-37-102. Acts 1963, No. 227, controlling.

Insofar as the provisions of this act are inconsistent with the provisions of any other law affecting savings and loan associations or building and loan associations, the provisions of this act shall control.

History. Acts 1963, No. 227, § 62; A.S.A. 1947, § 67-1862.

Meaning of “this act”. Acts 1963, No. 227, codified as §§ 23-37-101 — 23-37-104, 23-37-106, 23-37-107, 23-37-201 —

23-37-214, 23-37-301 — 23-37-315, 23-37-401, 23-37-403, 23-37-405, 23-37-406, 23-37-501 — 23-37-512, 23-37-601 — 23-37-603, 23-37-701 — 23-37-705.

23-37-103. Authority to do business as savings and loan association.

(a) From and after March 13, 1963, it shall be unlawful for any person, firm, company, association, fiduciary, partnership, or corporation, by whatever name called, except banks, to do business as a savings and loan association or a building and loan association within this state or to maintain any office in this state for the purpose of doing such business, except:

(1) Associations organized under the laws of this state and subject to this chapter; and

(2) Federal associations chartered to do business in this state.

(b) Any person, firm, or corporation, by whatever name known, except banks, which accepts funds from the public in the form of savings accounts, deposits, certificates of deposit, or similar evidences of indebtedness, and a substantial part of whose business is the making of loans on the security of real estate, shall be subject to all of the laws of this state governing the operation of a savings and loan or building and loan association.

History. Acts 1963, No. 227, § 57;
A.S.A. 1947, § 67-1857.

23-37-104. Preexisting associations.

(a) The name, rights, powers, privileges, and immunities of every corporation incorporated in this state prior to March 13, 1963, and authorized under the laws of this state to carry on the business of a building and loan association or savings and loan association shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act to the same extent and effect as if the corporation had been incorporated pursuant hereto.

(b) The articles of incorporation or association, certificate of incorporation, or charter, however entitled, bylaws and constitution, or other rules of every such corporation made or existing prior to March 13, 1963, are modified, altered, and amended to conform to the provisions of this act, with or without the issuance or approval by the Supervisor of Savings and Loan Associations of conformed copies of those documents. These documents are declared void to the extent that they are inconsistent with the provisions of this act.

(c) However, the obligations of any such existing corporation, whether between the corporation and its members, or any of them, or any other person, or any valid contract between the members of the corporation, or between the corporation and any other person, existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act.

(d) With the exceptions mentioned in subsection (c) of this section, every such corporation shall possess the same rights, powers, privileges, and immunities as if chartered under this act and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this act, notwithstanding anything to the contrary in its certificate of incorporation, bylaws, constitution, or rules.

(e) All obligations to the corporation contracted prior to March 13, 1963, shall be enforceable by it and in its name, and demands, claims, and rights of action against the corporation may be enforced against it as fully and completely as they might have previously been enforced.

(f) The existing charter of any association formed pursuant to Acts 1929, No. 128, or any other law of this state, is confirmed and shall be deemed to be valid and outstanding to the same extent as if issued pursuant to this act.

History. Acts 1963, No. 227, § 56; 207, 23-38-209 — 23-38-214, 23-38-216, A.S.A. 1947, § 67-1856. 23-38-217, 23-38-220, 23-38-302 — 23-38-304, 23-38-307, 23-38-401 — 23-38-404.

Publisher's Notes. Acts 1929, No. 128, referred to in this section, is codified as 23-38-101, 23-38-102, 23-38-201 — 23-38-207, 23-37-102.

23-37-105. Arkansas Business Corporation Act applicable to stock savings and loan associations.

Hereafter the Arkansas Business Corporation Act, § 4-26-101 et seq., shall be applicable to permanent stock savings and loan associations created or operating under the provisions of Acts 1963, No. 227, and those savings and loan associations shall enjoy the same powers and privileges and be subject to the same duties, restrictions, and liabilities as other corporations, except so far as the same may be limited or enlarged by the provisions of Acts 1963, No. 227. If any provision of Acts 1963, No. 227, conflicts with the Arkansas Business Corporation Act, § 4-26-101 et seq., the provisions of Acts 1963, No. 227, shall govern.

History. Acts 1971, No. 110, § 1; A.S.A. 1947, § 67-1864. 405, 23-37-406, 23-37-501 — 23-37-512, 23-37-601 — 23-37-603, 23-37-701 — 23-37-705.

Publisher's Notes. Acts 1963, No. 227, referred to in this section, is codified as §§ 23-37-101 — 23-37-104, 23-37-106, 23-37-107, 23-37-201 — 23-37-214, 23-37-301 — 23-37-315, 23-37-401, 23-37-403, 23-37-405, 23-37-406, 23-37-501 — 23-37-512, 23-37-601 — 23-37-603, 23-37-701 — 23-37-705.

Cross References. Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.

23-37-106. Federal savings and loan associations.

Unless federal laws or regulations provide otherwise, federal associations and the members thereof, incorporated pursuant to the Home Owners' Loan Act of 1933, shall possess all of the rights, powers, privileges, benefits, immunities, and exemptions that are provided for associations under this act. The making of any sections of this act specifically applicable to federal associations shall not be construed as making other sections of the act inapplicable to federal associations.

History. Acts 1963, No. 227, § 61; A.S.A. 1947, § 67-1861. **U.S. Code.** The Home Owners' Loan Act of 1933, referred to in this section, is codified as 12 U.S.C. § 1461 et seq.

Meaning of "this act". See note to § 23-37-102.

RESEARCH REFERENCES

ALR. Preemption Issues Arising Under Home Owners' Loan Act of 1933, 12 USCS § 1461 et seq. 13 A.L.R. Fed. 2d 161.

23-37-107. Fees.

The Supervisor of Savings and Loan Associations shall collect in advance, and the person or association so served shall pay, the following fees and charges:

(1) In charter application proceedings:

(A) For filing an application for charter, one thousand five hundred dollars (\$1,500);

(B) For filing a protest to an application for charter, one thousand dollars (\$1,000) from each protestant; and

(C) For filing a petition for rehearing, seven hundred fifty dollars (\$750);

(2) For filing and approval of an amendment to bylaws or articles of incorporation, twenty-five dollars (\$25.00);

(3)(A) An annual fee, payable at the time the annual report of the association is filed, equal to:

(i) Two hundred fifty dollars (\$250) for each one million dollars (\$1,000,000) of assets or fraction thereof, up to two million dollars (\$2,000,000);

(ii) One hundred dollars (\$100) on each one million dollars (\$1,000,000) of assets or fraction thereof, over two million dollars (\$2,000,000) and less than five million dollars (\$5,000,000); and

(iii) Fifty dollars (\$50.00) on each one million dollars (\$1,000,000) of assets or fraction thereof, over five million dollars (\$5,000,000).

(B) No association chartered under the laws of this state shall be subject to any privilege, occupation, or franchise taxes for transacting business throughout the state.

(C) In no event shall any association pay an annual fee in excess of five thousand dollars (\$5,000);

(4) For each extraordinary examination ordered by the Savings and Loan Association Board [abolished], a fee of one hundred dollars (\$100) per day for each examiner for each and every day the examiner is absent from the office of the supervisor for the purpose of making the examination. In addition, the person or association shall pay the actual hotel and traveling expenses of the authorized examiner to and from Little Rock;

(5) For filing a petition for conversion and verified minutes evidencing a conversion or plan of merger or consolidation, a fee of two hundred fifty dollars (\$250);

(6) For filing a certificate of dissolution, a fee of one hundred dollars (\$100);

(7) For filing a copy of a charter of a federal savings and loan association, a fee of fifty dollars (\$50.00);

(8) The supervisor is authorized, in his or her discretion, to charge a fee of not exceeding ten dollars (\$10.00) upon each application for his or her approval or the approval of the board, as provided by this chapter;

(9) For each certificate of the supervisor authenticating any document or other instrument, a fee of two dollars fifty cents (\$2.50), plus two dollars (\$2.00) for each page of the document or instrument;

(10) For issuing a broker's license or for the annual renewal of a broker's license, a fee of five hundred dollars (\$500);

(11) For a request for a special meeting of the board, one thousand five hundred dollars (\$1,500);

(12) For each examination of an association by an authorized examiner from the office of the supervisor, a fee of fifty dollars (\$50.00) per day for each examiner for each and every day the examiner is absent from the office of the supervisor for the purpose of making the examination. In addition, the person or association shall pay the actual hotel and traveling expenses of the authorized examiner to and from Little Rock;

(13) In branch office or other service facility application proceedings:

(A) For filing an application for a branch office or other service facility, two hundred fifty dollars (\$250);

(B) For filing a protest to an application for a branch office or other service facility, five hundred dollars (\$500) from each protestant;

(C) Upon the filing of one (1) or more protests, two hundred fifty dollars (\$250) from the applicant; and

(D) For filing a petition for rehearing, seven hundred fifty dollars (\$750); and

(14) In any proceeding before the board or the supervisor regarding any application, the applicant shall pay all costs of having the proceedings transcribed, and, if the proceedings are transcribed, the applicant shall furnish the original copy of the transcript to the supervisor.

History. Acts 1963, No. 227, § 54; 1975, No. 531, §§ 5-11; 1979, No. 361, § 10; A.S.A. 1947, § 67-1854.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

CASE NOTES

Cited: Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n, 260 Ark. 326, 538 S.W.2d 560 (1976).

23-37-108. Associations subject to gross receipts and compensating taxes.

All savings and loan associations organized pursuant to the laws of this state and doing business in this state and all federal savings and loan associations doing business in this state shall be subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

History. Acts 1969, No. 352, § 1; A.S.A. 1947, § 67-1863.

SUBCHAPTER 2 — SUPERVISION

SECTION.

23-37-201. Regulatory agencies generally.

23-37-202. Disclosure of information.

SECTION.

23-37-203. [Repealed.]

23-37-204. Records of hearings and decisions.

SECTION.

23-37-205. [Repealed.]

23-37-206. Division of Savings and Loan Associations — Supervisor — Staff.

23-37-207. Supervisor's powers and duties generally.

23-37-208. Supervisor's investigatory powers.

23-37-209. Communications from supervisor — Manner of sending.

SECTION.

23-37-210. Annual audit and examination.

23-37-211. Accounting practices.

23-37-212. Cease and desist orders, injunctions, etc.

23-37-213. [Repealed.]

23-37-214. Appeal from decision of board.

Effective Dates. Acts 1963, No. 227, § 65: Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 292, § 8: Mar. 12, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws governing the Arkansas Savings and Loan Association Board do not sufficiently define the authority of such Board, that such condition has greatly handicapped the Board in the proper administration of its duties and that existing fees paid by savings and loan associations to the Supervisor of savings and loan associations are inadequate and insufficient to defray the costs of the services performed by the Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 13, § 3: Jan. 1, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is presently no authority for the appointment of a special member of the State Savings and

Loan Board to serve upon disqualification of a regular member and that it is in the best interest of all persons concerned that specific authority be provided for such appointments. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 444, § 6: Mar. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that confusion exists regarding several statutes relating to the administrative functions of the Supervisor of the Savings and Loan Board and a conflict between the Building and Loan Act and the Savings and Loan Act and that such confusion is detrimental to the welfare of the citizens of this State and that this Act is immediately necessary to eliminate such confusion. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135 § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect

on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 785, § 3: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Savings and Loan Act requires quarterly meetings of the Board, regardless of need, therefore causing undue hardship for Board members and causing unnecessary expense to the Board; and that such designation of the location of the meetings to be held in Little Rock has resulted in undue hardship on distant members of the Board. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 11 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., §§ 5, 6.

23-37-201. Regulatory agencies generally.

All associations subject to this chapter shall be supervised and regulated, and the provisions of this chapter shall be enforced by the Supervisor of Savings and Loan Associations, acting pursuant to the authority delegated by this chapter.

History. Acts 1963, No. 227, § 47; A.S.A. 1947, § 67-1847; Acts 1997, No. 258, § 1.

23-37-202. Disclosure of information.

It shall be unlawful for any member of the Savings and Loan Association Board [abolished], the Supervisor of Savings and Loan Associations, or any employee of the state to divulge any information concerning an association acquired in the discharge of their duties under this chapter, except:

(1) Information that is contained in any published report issued by any association;

(2) Information as to the condition of any association requested by the Federal Home Loan Bank Board [abolished], the Federal Savings and Loan Insurance Corporation [abolished], any Federal Home Loan bank, or the savings and loan association departments of any other state; or

(3) When directed by a court of competent jurisdiction to give information or evidence concerning an association.

History. Acts 1963, No. 227, § 3; A.S.A. 1947, § 67-1803.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Savings and Loan Insur-

ance Corporation and the Federal Home Loan Bank Board referred to in this section were abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entities have been largely assumed by the Office of the Comptroller of the Currency and the Federal Housing Finance Agency.

23-37-203. [Repealed.]

A.C.R.C. Notes. The amendment of this section by Acts 1997, No. 250, is deemed to be superseded by the repeal of this section by Acts 1997, No. 258. See §§ 1-2-207 and 1-2-303.

Publisher's Notes. This section, concerning the Savings and Loan Association Board creation and members, was repealed by Acts 1997, No. 258, § 2. The

section was derived from Acts 1963, No. 227, §§ 5-7; 1973, No. 292, § 1; 1979, No. 361, § 3; 1980 (1st Ex. Sess.), No. 13, §§ 1, 2; 1981, No. 444, § 1; 1983, No. 131, §§ 1-3; 1983, No. 135, §§ 1-3; 1985, No. 785, § 1; A.S.A. 1947, §§ 6-623 — 6-625, 67-1805 — 67-1807; Acts 1997, No. 250, §§ 220, 221.

23-37-204. Records of hearings and decisions.

The Supervisor of Savings and Loan Associations shall maintain permanent records of all hearings and decisions.

History. Acts 1963, No. 227, § 8; A.S.A. 1947, § 67-1808; Acts 1997, No. 258, § 3.

23-37-205. [Repealed.]

Publisher's Notes. This section, concerning powers and duties of the Savings and Loan Association Board, was repealed by Acts 1997, No. 258, § 4. The section

was derived from Acts 1963, No. 227, §§ 8, 10, 12; 1979, No. 361, § 5; A.S.A. 1947, §§ 67-1808, 67-1810, 67-1812.

23-37-206. Division of Savings and Loan Associations — Supervisor — Staff.

(a) There is created a Division of Savings and Loan Associations of the State Securities Department which shall be administered by the Supervisor of Savings and Loan Associations.

(b)(1) The Securities Commissioner shall act as Supervisor of Savings and Loan Associations. He or she may appoint an assistant securities commissioner responsible for financial institutions to act as

the Assistant Supervisor of Savings and Loan Associations and perform all duties delegated by the commissioner.

(2) The supervisor shall appoint any other assistants, secretaries, and examiners who may be necessary to assist in the performance of his or her duties under this chapter.

History. Acts 1963, No. 227, § 2; 1979, No. 361, § 2; A.S.A. 1947, § 67-1802.

23-37-207. Supervisor's powers and duties generally.

(a) The Supervisor of Savings and Loan Associations shall have general supervision of associations doing business in this state and shall be charged with the execution of the laws of this state relating to those associations.

(b) In order to fulfill his or her responsibilities, the supervisor shall have the following powers, duties, limitations, and functions:

(1) He or she shall have all the rights, powers, and privileges heretofore vested in the Savings and Loan Association Board [abolished] and be subject to all duties to which the Savings and Loan Association Board [abolished] was heretofore subject;

(2) He or she shall, in such coordination with the Federal Home Loan Bank Board [abolished], the Federal Deposit Insurance Corporation, and other federal and state regulatory authorities as he or she deems appropriate, provide for the orderly examination and supervision of associations regulated by this chapter. All federal records, documents, and examinations received by the supervisor are not public unless released by the appropriate federal agency; and

(3) He or she, or any designated assistant, shall hear all applications for charters for new associations, all protested applications for new branches, those matters concerning a protested move of the home office or a branch office, any conversion application by an association, and all other administrative matters under this chapter. Administrative decisions of the supervisor are subject to appeal as set forth in § 23-37-214.

(c)(1) The supervisor, after public hearing, notice of which has been given to every association in the state, shall have power and authority to issue rules and regulations governing the operation of associations in a manner consistent with this chapter and other applicable Arkansas laws. In addition, he or she shall have the power to make and promulgate any forms which are necessary for the administration of this chapter.

(2) These rules and regulations may from time to time be amended, modified, or repealed by the Savings and Loan Association Board [abolished] and shall have uniform application to all associations subject to the provisions of this chapter.

(d) Any person affected or who may be affected by an action of the supervisor shall be given the opportunity of appearing and presenting evidence before the supervisor.

History. Acts 1963, No. 227, §§ 2, 12; 1979, No. 361, § 2; A.S.A. 1947, §§ 67-1802, 67-1812; Acts 1997, No. 258, § 5.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of the Savings and Loan

Associations.

The Federal Home Loan Bank Board referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Federal Housing Finance Agency.

23-37-208. Supervisor's investigatory powers.

(a) For the purpose of any investigation, examination, inquiry, or proceeding under this chapter or the Building and Loan Association Act, § 23-38-101 et seq., the Supervisor of Savings and Loan Associations or any officer designated by the supervisor may administer oaths and affirmations, subpoena witnesses or documents, compel their attendance, take evidence, and require the production of any books, papers or correspondence, memoranda, agreements, or other documents which the supervisor deems relevant or material to the inquiry or examination.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the supervisor, may issue to the person an order requiring him or her to appear before the supervisor or the officer designated by him or her, there to produce documentary evidence if so ordered or to give evidence concerning the examination, investigation, or inquiry. Failure to obey the order of the court may be punished by the court as a contempt of court.

History. Acts 1963, No. 227, § 49; 1979, No. 361, § 9; A.S.A. 1947, § 67-1849.

23-37-209. Communications from supervisor — Manner of sending.

Every approval or rejection by the Supervisor of Savings and Loan Associations given pursuant to provisions of this chapter and every communication having the effect of an order or instruction to any association shall be sent by certified mail to the affected association, addressed to the president at the home office of the association, and shall be presented to the board of directors of the association at its next regular meeting, or at a special meeting called for that purpose, and noted in the minutes of the meeting.

History. Acts 1963, No. 227, § 4; A.S.A. 1947, § 67-1804.

23-37-210. Annual audit and examination.

(a)(1) The affairs of every association subject to this chapter shall be examined and audited periodically by the Supervisor of Savings and Loan Associations.

(2) However, the audit and examination may be performed jointly by the supervisor and either the Federal Home Loan Bank Board [abolished], a Federal Home Loan bank, or the Federal Savings and Loan Insurance Corporation [abolished]. The supervisor shall accept the examination and audit, in whole or in part, of either the Federal Home Loan Bank Board [abolished], a Federal Home Loan bank, the Federal Savings and Loan Insurance Corporation [abolished], or an independent certified public accountant, provided the examination and audit are made available to the supervisor. Federal records, documents, and examinations received by the supervisor are not public unless released by the appropriate federal agency.

(b) The report of the examinations, any letters of comment, and the audit shall be filed with the supervisor.

(c) The supervisor or his or her authorized representative shall have free access to all books and records of an association.

(d) Whenever in the judgment of the supervisor the condition of an association renders it necessary or expedient to make extra or additional examinations or audits, the supervisor shall cause the additional work to be done, and the association shall pay the cost of it.

(e) Every report of examination or audit shall be presented by the president of the association to its board of directors at their next regular meeting, or at a special meeting called for that purpose, and noted in the minutes thereof.

History. Acts 1963, No. 227, § 49; 1979, No. 361, § 9; A.S.A. 1947, § 67-1849.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board referred to in this section were abolished by the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entities have been largely assumed by the Office of the Comptroller of the Currency and the Federal Housing Finance Agency.

23-37-211. Accounting practices.

Every association shall use those forms and observe those accounting principles and practices which the Supervisor of Savings and Loan Associations, with the approval of the Savings and Loan Association Board [abolished], may require from time to time.

History. Acts 1963, No. 227, § 48; A.S.A. 1947, § 67-1848.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-212. Cease and desist orders, injunctions, etc.

(a)(1) If after notice from the Supervisor of Savings and Loan Associations, an association continues to violate a section of this chapter or the rules or is engaging in an unsafe and unsound practice, then the supervisor may issue a cease and desist order to discontinue the practice.

(2) If ninety (90) days after the cease and desist order has been entered the association continues to violate this chapter or the rules, then the supervisor may impose a civil fine of up to one hundred dollars (\$100) per day until the violation or unsafe and unsound practice ceases.

(3) All fines collected by the supervisor will be transferred to the general revenues of the State of Arkansas.

(b)(1) Whenever it appears to the supervisor, upon sufficient grounds or evidence satisfactory to him or her, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he or she may summarily order the person to cease and desist from that act or practice. The order shall be effective for not more than twenty (20) days, during which time the supervisor may apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this chapter or any rule or order hereunder.

(2) However, the supervisor may, without issuing a cease and desist order, apply directly to the Pulaski County Circuit Court for the aforesaid relief.

(3) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(4) The court may not require the supervisor to post bond.

History. Acts 1963, No. 227, § 49; 1979, No. 361, § 13; 1979, No. 361, § 9; 1963, No. 227, § 70, as added by Acts A.S.A. 1947, §§ 67-1849, 67-1869.

CASE NOTES

Cited: Guaranty Sav. & Loan Ass'n v. Federal Home Loan Bank Bd., 794 F.2d 1339 (8th Cir. 1986).

23-37-213. [Repealed.]

Publisher's Notes. This section, concerning appeal to the Savings and Loan Association Board from action of supervisor, was repealed by Acts 1997, No. 258,

§ 6. The section was derived from Acts 1963, No. 227, § 9; 1979, No. 361, § 4; A.S.A. 1947, § 67-1809.

23-37-214. Appeal from decision of board.

(a) Any person affected by any action, decision, or order of the Savings and Loan Association Board [abolished] may, within thirty (30) days after a written copy of the action, decision, or order has been mailed to that person, appeal as a matter of right to the Pulaski County Circuit Court by filing written notice of appeal in that court and by filing a copy of the notice with the Supervisor of Savings and Loan Associations.

(b) Upon filing of the notice of appeal, the court shall have full jurisdiction, shall determine whether the appeal shall operate as a stay of the order, decision, or action appealed from, and shall have the right at any time thereafter to issue any other temporary or preliminary orders which it may deem proper until final judgment is rendered.

(c) Within thirty (30) days after the filing of a notice of appeal in his or her office, the supervisor shall make, certify, and deposit in the office of the clerk of the court a full and complete transcript of all proceedings had before the board and of all evidence before the board in the matter and of all files of the supervisor therein.

(d) As soon as reasonably possible after receipt of the transcript, evidence, and files, the Pulaski County Circuit Court shall review the action of the board appealed from. The appeal shall be upon the basis of the record so presented. In any such review the findings of the board as to the facts, if supported by substantial evidence, shall be conclusive.

(e) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the board in whole or in part or remand the action to the board for further proceedings in accordance with the court's direction, including the taking of additional evidence.

(f) Costs shall be awarded as in civil actions.

(g) An appeal may be taken to the Supreme Court from a judgment of the circuit court, as in other civil cases.

History. Acts 1963, No. 227, § 11; A.S.A. 1947, § 67-1811.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

CASE NOTES

ANALYSIS

Full Jurisdiction.

Scope of Review.

Substantial Evidence.

Full Jurisdiction.

Words "full jurisdiction" do not mean exclusive jurisdiction which is unimpaired by the Administrative Procedure Act

(§ 25-15-201 et seq.). *Arkansas Sav. & Loan Ass'n Bd. v. Corning Sav. & Loan Ass'n*, 252 Ark. 264, 478 S.W.2d 431 (1972).

Scope of Review.

The substantial evidence rule governs the Supreme Court's review of action of the Savings and Loan Association Board in granting a charter to a new association.

Morrilton Fed. Sav. & Loan Ass'n v. Arkansas Valley Sav. & Loan Ass'n, 243 Ark. 627, 420 S.W.2d 923 (1967).

Substantial Evidence.

Where there was substantial evidence in the record to support the board's granting a charter the findings of the board that a charter should be granted is upheld. Heber Springs Sav. & Loan Ass'n v. Cleburne County Bank, 240 Ark. 759, 402 S.W.2d 636 (1966).

Where application for savings and loan charter met all requisites except for those of § 23-37-310(a)(3), board's action of refusing the charter was upheld on the "substantial evidence" test. Arkansas Sav. & Loan Bd. v. Southerland, 256 Ark. 445, 508 S.W.2d 326 (1974).

Cited: Piggott State Bank v. State Banking Bd., 242 Ark. 828, 416 S.W.2d 291 (1967).

SUBCHAPTER 3 — ORGANIZATION

SECTION.

- 23-37-301. Application for charter.
- 23-37-302. Capitalization requirements generally.
- 23-37-303. Permanent capital stock.
- 23-37-304. Permanent stock associations — Paid-in surplus requirements.
- 23-37-305. Permanent stock associations — Initial subscriptions to savings accounts.
- 23-37-306. Mutual associations — Expense fund requirement.
- 23-37-307. Bylaws.
- 23-37-308. Insurance of accounts.

SECTION.

- 23-37-309. Hearings on charter applications.
- 23-37-310. Approval or denial of application for charter.
- 23-37-311. Failure to commence business — Cancellation of charter.
- 23-37-312. Amendment of charter and bylaws.
- 23-37-313. Changes in name, location, etc.
- 23-37-314. Indemnity bonds of directors, officers, and employees.
- 23-37-315. Corporate name.
- 23-37-316. Standards of conduct.

Effective Dates. Acts 1963, No. 227, § 65; Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 292, § 8; Mar. 12, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws governing the Arkansas Savings and Loan Association Board do not sufficiently define the authority of such Board, that such condition has greatly handicapped the Board in the

proper administration of its duties and that existing fees paid by savings and loan associations to the Supervisor of savings and loan associations are inadequate and insufficient to defray the costs of the services performed by the Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 531, § 16; Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Savings and Loan Association Board and the Arkansas Savings and Loan Association Supervisor do not sufficiently define such authority and that such condition has greatly handicapped the Board and Supervisor in the proper administration of their duties as to defining in a reasonable manner the time allowed for an association to commence business from the effective date of its

grant of authority, as to the fees presently charged by the Board and Supervisor and as to general regulatory matters under the review of the Board and Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 350, § 4: Mar. 3, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, Regular Session 1977, that there are property rights and

savings and loan associations and communities affected that could be irreparably damaged if there is a delay in the enactment and the effective date of this law; and further that it is essential to fair play and justice that this Act take effect and be in force from the date of its approval. Therefore an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 6 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 9 et seq.

23-37-301. Application for charter.

(a) Application for a charter for a savings and loan association may be made by ten (10) or more citizens of this state, hereinafter referred to as "incorporators", by tendering to the supervisor, along with the prescribed filing fee, an application consisting of the following:

(1) Two (2) copies of the articles of incorporation for the proposed association stating:

- (A) The name and the site of the principal office of the association;
- (B) The names and addresses of the incorporators;
- (C) The name and address of the resident agent for service of process on the association;
- (D) The term of the corporate existence, which may be either perpetual or limited to a fixed number of years;
- (E) Whether the association will carry on its business as a mutual association or as a permanent stock association; and

(F) For a permanent stock association, the number of shares of permanent stock authorized and the par value of each share;

(2) A statement as to:

- (A) The amount, if any, of permanent stock which has been subscribed and paid for at the time of filing;
- (B) The names and addresses of the subscribers and the amount subscribed by each;
- (C) The names, addresses, and amounts of savings accounts which have been subscribed; and
- (D) The amount of paid-in surplus or expense fund with which the association will commence business;

(3) Two (2) copies of the bylaws under which the association proposes to operate;

(4) The names and addresses of the chair of the incorporators, the proposed members of the board of directors, and the proposed officers; and

(5) Any other information in regard to the proposed association and its operation which may be required by the Supervisor of Savings and Loan Associations.

(b) The articles of incorporation and all statements of fact tendered to the supervisor in connection with an application for charter shall be subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

History. Acts 1963, No. 227, § 16; A.S.A. 1947, § 67-1816.

CASE NOTES

Application.

Where a first application for incorporation fully met all statutory requirements as to stock and savings account subscriptions, but the application was turned down for other reasons, a second application, which duplicated of the first as to subscriptions to stock and savings accounts with the names and amounts sub-

scribed of three of the original subscribers who had withdrawn crossed out, a new and additional separate subscription contract was not necessary where those remaining met all statutory requirements. *White County Guar. Sav. & Loan Ass'n v. Searcy Fed. Sav. & Loan Ass'n*, 241 Ark. 878, 410 S.W.2d 760 (1967).

23-37-302. Capitalization requirements generally.

The capitalization of a proposed stock or mutual association shall be in accordance with rules and regulations established by the Savings and Loan Association Board [abolished]. In establishing its requirements, the board may consider those requirements established by the Federal Savings and Loan Insurance Corporation [abolished], but its requirements may not be greater than those prescribed by that corporation.

History. Acts 1963, No. 227, § 19; 1979, No. 361, § 6; A.S.A. 1947, § 67-1819.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

CASE NOTES

Stock Subscriptions.

In the formation of a savings and loan association, unlike the formation of some business corporations of another class, the

amount subscribed for permanent capital stock in savings and loan association stock subscriptions must be paid in before an application is approved. *White County*

Guar. Sav. & Loan Ass'n v. Searcy Fed. Sav. & Loan Ass'n, 241 Ark. 878, 410 S.W.2d 760 (1967).

23-37-303. Permanent capital stock.

(a) The charter of an association may provide for the issuance of permanent capital stock. The permanent capital stock, when issued, may not be retired or withdrawn, except as provided in this section, until all liabilities of the association shall have been satisfied in full, including the withdrawal value of all savings accounts.

(b) Permanent capital stock must be fully paid in cash in advance of issuance, and the association may not make any loans against the shares of the stock.

(c) Shares of permanent capital stock may have a par value of not less than one dollar (\$1.00) nor more than one hundred dollars (\$100) each.

(d) An association authorized to issue capital stock must have, at all times, issued and outstanding, an amount thereof equal in par value to the minimum capital requirements set out in § 23-37-302 or two and one-half percent (2½%) of its gross assets, whichever is greater, but no association shall be required to have more than two hundred fifty thousand dollars (\$250,000) of par value of the stock outstanding.

(e) Associations whose savings accounts are insured by the Federal Savings and Loan Insurance Corporation [abolished] may retire a part of any permanent capital stock issued prior to March 13, 1963, when the associations are authorized to do so by majority vote at any annual meeting of their stockholders, or any special meeting of their stockholders called for such a purpose. However, the basis of the retirement shall have been first approved by the Supervisor of Savings and Loan Associations and by the Savings and Loan Association Board [abolished].

History. Acts 1963, No. 227, § 18; A.S.A. 1947, § 67-1818.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

CASE NOTES

Payment.

The permanent capital stock of a savings and loan association must be fully paid for in cash in advance of the issuance.

White County Guar. Sav. & Loan Ass'n v. Searcy Fed. Sav. & Loan Ass'n, 241 Ark. 878, 410 S.W.2d 760 (1967).

23-37-304. Permanent stock associations — Paid-in surplus requirements.

As a prerequisite to the approval of any application for a permanent stock association, the incorporators must show to the satisfaction of the Supervisor of Savings and Loan Associations a paid-in surplus of not less than one-third ($\frac{1}{3}$) of the aggregate amount of the permanent capital stock required by this chapter. The paid-in surplus may be used in lieu of earnings to pay organization and operating expenses, dividends on savings accounts, and to meet any loss reserve requirements.

History. Acts 1963, No. 227, § 20;
A.S.A. 1947, § 67-1820.

23-37-305. Permanent stock associations — Initial subscriptions to savings accounts.

As a prerequisite to approval of any application for a proposed permanent stock association, the incorporators must show, to the satisfaction of the Savings and Loan Association Board [abolished], subscribed savings accounts from individuals in the aggregate number and amount which, in the opinion of the board, will justify the initial successful operation of the association.

History. Acts 1963, No. 227, § 30; tion was repealed by Acts 1997, No. 258,
A.S.A. 1947, § 67-1830. and its powers and duties were given to

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

CASE NOTES

In General.

The incorporators must show to the satisfaction of the board that a sufficient number of individuals have agreed to open savings accounts in sufficient amounts which in the opinion of the board will

justify the initial successful operation of the association. *White County Guar. Sav. & Loan Ass'n v. Searcy Fed. Sav. & Loan Ass'n*, 241 Ark. 878, 410 S.W.2d 760 (1967).

23-37-306. Mutual associations — Expense fund requirement.

(a) In addition to the savings account subscriptions required by this chapter, the incorporators of a mutual association must show to the satisfaction of the Supervisor of Savings and Loan Associations that an expense fund has been subscribed and paid in to the credit of the proposed association equal to not less than one-third ($\frac{1}{3}$) of the required savings accounts, from which expense fund the expenses of organizing the association and its operating expenses, in addition to such dividends as may be declared and paid or credited to its savings account holders, may be paid until such time as its earnings are sufficient to pay them.

(b) The amount so contributed to the expense fund shall not constitute a liability of the association except as provided in this section.

(c)(1) The contributions may be repaid pro rata to the contributors from the net earnings of the association after provision for required loss reserve and payment of dividends declared on savings accounts.

(2) In case of a liquidation of an association before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after payment of all creditors, the expenses of liquidation, and the withdrawal value of all savings accounts shall be paid pro rata to the contributors.

(d) Contributors to the expense fund shall be paid dividends, and for such purposes their contributions shall be considered as savings accounts of the association.

History. Acts 1963, No. 227, § 22;
A.S.A. 1947, § 67-1822.

23-37-307. Bylaws.

In addition to any provisions which may be adopted by the incorporators and approved by the Supervisor of Savings and Loan Associations, the bylaws of every association shall provide:

(1) For an annual meeting of the membership of the association, or of the owners of permanent capital stock, for the purpose of electing directors;

(2) For not fewer than five (5) nor more than twenty-one (21) members of the board of directors;

(3) For not less than ten (10) days' written notice to all members, or holders of permanent capital stock, of any special meeting of the association. Provided, no notice of an annual meeting of an association shall be required;

(4) For a term of office not to exceed one (1) year for each member of the board of directors; and

(5) For the amendment of the bylaws, with the approval of the supervisor, by a majority of the members present, or holders of permanent capital stock, at any annual or special meeting of the association.

History. Acts 1963, No. 227, § 17;
1975, No. 531, § 2; A.S.A. 1947, § 67-1817.

23-37-308. Insurance of accounts.

No association chartered under this chapter shall carry on the business of a savings and loan association in this state until it has filed with the Supervisor of Savings and Loan Associations satisfactory evidence that its savings accounts are insured by the Federal Savings and Loan Insurance Corporation [abolished] or other similar agency or corporation of the United States.

History. Acts 1963, No. 227, § 31; A.S.A. 1947, § 67-1831.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

CASE NOTES

ANALYSIS

Constitutionality.

Evidence of Insurance.

Legislature's Authority.

Constitutionality.

This section is a valid delegation of legislative authority. *Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n*, 260 Ark. 326, 538 S.W.2d 560 (1976).

Evidence of Insurance.

The evidence of insurance required by this section is not a prerequisite to the granting of a charter, but only to the carrying on of business, and the lack of

such insurance offered as ground for objection to the granting of a charter is a premature objection. *Morrilton Fed. Sav. & Loan Ass'n v. Arkansas Valley Sav. & Loan Ass'n*, 243 Ark. 627, 420 S.W.2d 923 (1967).

Legislature's Authority.

The legislature has the power to require insurance on savings and loan accounts under the police power of the state. *Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n*, 260 Ark. 326, 538 S.W.2d 560 (1976).

Cited: *West Helena Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 553 F.2d 1175 (8th Cir. 1977); *Turner v. Woodruff*, 286 Ark. 66, 689 S.W.2d 527 (1985).

23-37-309. Hearings on charter applications.

When a proper application for a charter has been filed, the Supervisor of Savings and Loan Associations shall hold a public hearing on the application, after giving not less than twenty (20) days' written notice of the date and time of hearing to each existing association or federal association in the state. The notice shall be made promptly after the filing of an application. At the hearing, any interested party may appear, present evidence, and be heard for or against the application.

History. Acts 1963, No. 227, § 23; 1973, No. 292, § 2; A.S.A. 1947, § 67-1823; Acts 1997, No. 258, § 7.

23-37-310. Approval or denial of application for charter.

(a) The Savings and Loan Association Board [abolished] shall not approve any charter application unless the incorporators establish and the board shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and the official records of the Supervisor of Savings and Loan Associations that:

(1) All the prerequisites for the approval of a charter set forth in this chapter have been complied with;

(2) The character, responsibility, and general fitness of the persons who are named in the articles of incorporation and who will serve as directors and officers of the association are such as to command confidence and warrant belief that the business of the proposed asso-

ciation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and the proposed association will have qualified full-time management;

(3) There is a public need for the proposed association, and the volume of business in the area in which the proposed association will conduct its business is such as to indicate a successful operation;

(4) The operation of the proposed association will not unduly harm any other existing association, federal savings and loan association, or other financial institution; and

(5)(A) The proposed association will be independent of the other financial institutions.

(B) Those persons named in the articles of incorporation as directors and officers do not have affiliations with any financial institutions or other businesses closely related to the savings and loan association business which would affect the independence of the proposed association.

(C) The directors are representative of the community.

(b)(1) If the board so finds, its findings shall be stated in writing, and the supervisor shall endorse the approval of the board on the proposed articles of incorporation and bylaws, whereupon the proposed association shall be a corporate body and may exercise the powers of a savings and loan association as set forth in this chapter.

(2) A copy of the articles of incorporation of the association bearing the approval of the supervisor shall be filed in the office of the supervisor, with the Secretary of State, and with the county clerk of the county in which the home office of the association is located.

(c) If the board does not make the findings as required by subsection (a) of this section, it shall issue a written statement of its grounds for refusal. This statement shall be promptly mailed to the chair of the incorporators by certified mail.

History. Acts 1963, No. 227, §§ 24, 25; 1973, No. 292, § 3; A.S.A. 1947, §§ 67-1824, 67-1825.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

CASE NOTES

ANALYSIS

- Compliance with Section.
- Findings of Board.
- Grounds for Denial.
- Public Need.
- Qualified Full Time Management; Directors and Officers.
- Standard of Review.

Compliance with Section.

Where the record disclosed that there was substantial evidence for the board's

finding that this section had been complied with, the granting of a charter by the board must be upheld. *Heber Springs Sav. & Loan Ass'n v. Cleburne County Bank*, 240 Ark. 759, 402 S.W.2d 636 (1966).

Findings of Board.

Failure of the board to make specific findings of underlying facts in support of its denial of application for charter by savings and loan association necessitated remand to the board for further proceeding, since requirement for such a finding

of underlying facts could not be waived by litigant, its purpose being to inform reviewing courts. *Arkansas Sav. & Loan Asso. Board v. Central Arkansas Sav. & Loan Asso.*, 256 Ark. 846, 510 S.W.2d 872 (1974).

In order to determine the need for a new office of a savings and loan association the board's order must contain facts, figures or computations which form the basis for the order. *First Fed. Sav. & Loan Ass'n v. Arkansas Sav. & Loan Ass'n Bd.*, 257 Ark. 985, 521 S.W.2d 542 (1975).

Orders of the Arkansas Savings and Loan Association Board authorizing the establishment of a new institution which merely paraphrase the statute and do not contain an explicit statement of the underlying facts supporting the finding were insufficient. *First Fed. Sav. & Loan Ass'n v. Arkansas Sav. & Loan Ass'n Bd.*, 257 Ark. 985, 521 S.W.2d 542 (1975).

The board's order establishing a new savings and loan association office should have contained findings relating to the basis for an amount of the savings and loan potential, the sources from which the savings and loans would be derived, the amount of savings and loans required to support the applicant, the loss of savings and loan which might be suffered by other existing financial institutions and other underlying facts. *First Fed. Sav. & Loan Ass'n v. Arkansas Sav. & Loan Ass'n Bd.*, 257 Ark. 985, 521 S.W.2d 542 (1975).

Grounds for Denial.

Contention that a branch bank could be more economically operated than a new association was not a statutory ground for denying a charter. *Arkansas Sav. & Loan Ass'n Bd. v. Corning Sav. & Loan Ass'n*, 253 Ark. 987, 490 S.W.2d 460 (1973).

Where there was substantial evidence that a proposed savings and loan business would not be a successful operation the denial of the application by the savings and loan board was upheld. *Arkansas Sav. & Loan Bd. v. Southerland*, 256 Ark. 445, 508 S.W.2d 326 (1974).

Public Need.

Where only ground for denial of application was no public need and the evidence on behalf of the application was sufficient to show a public need while the evidence in opposition was mere conclusions without sufficient basis in fact, the

application should have been granted. *Izard v. Arkansas Sav. & Loan Ass'n Bd.*, 239 Ark. 670, 393 S.W.2d 245 (1965).

Evidence held sufficient to sustain a finding that a new association in the area was needed. *Morrilton Fed. Sav. & Loan Ass'n v. Arkansas Valley Sav. & Loan Ass'n*, 243 Ark. 627, 420 S.W.2d 923 (1967).

Board's finding that proposed association would not succeed and that there was an absence of public need was held not to be supported by substantial evidence. *Arkansas Sav. & Loan Ass'n Bd. v. Corning Sav. & Loan Ass'n*, 253 Ark. 987, 490 S.W.2d 460 (1973).

Evidence showing increase in time deposits in the county and increase in mortgages by savings and loan institutions outside the county secured by residential property within the county supported finding that evidence did not support board's denial of savings and loan company's application for a charter. *Arkansas Sav. & Loan Ass'n Bd. v. Grant County Sav. & Loan Ass'n*, 256 Ark. 858, 510 S.W.2d 863 (1974).

Qualified Full Time Management; Directors and Officers.

Testimony that the persons who would serve as officers and directors of the applicant association planned to employ an experienced full-time manager was sufficient to sustain a finding that the character, responsibility, and general fitness of such persons was such as to warrant belief that the association would have qualified full time management. *Morrilton Fed. Sav. & Loan Ass'n v. Arkansas Valley Sav. & Loan Ass'n*, 243 Ark. 627, 420 S.W.2d 923 (1967).

Where some of the directors had no ties with any bank and one unnamed director, the managing officer, had no ties to any local bank, and where they had attained successful careers in their respective professions, being representative of the community, the board was justified in finding that the proposed directors, successful in their own right, would be independent and conscientious in their new responsibilities in preserving their own interest as the paramount interest of the public. *First Fed. Sav. & Loan Ass'n v. Union Fid. Sav. & Loan Ass'n*, 257 Ark. 199, 515 S.W.2d 75 (1974).

An order authorizing the establishment of a new office of a savings and loan

association which states that the managing officer will not be employed until the supervisor of the board determines that he is qualified is in violation of this section since the board is the one that must make the finding of qualification and not the supervisor. *First Fed. Sav. & Loan Ass'n v. Arkansas Sav. & Loan Ass'n Bd.*, 257 Ark. 985, 521 S.W.2d 542 (1975).

The Savings and Loan Association Board is not required to make a specific finding that the charter applicant will have qualified, full-time management but only that the character, responsibility, and general fitness of the proposed directors and officers be such as to warrant a belief that the proposed association will have qualified, full-time management. *First State Bldg. & Loan Ass'n v. Arkansas Sav. & Loan Ass'n Bd.*, 261 Ark. 482, 549 S.W.2d 274 (1977).

Standard of Review.

The reviewing court cannot substitute its judgment for that of the board and

must affirm the board unless it finds no substantial evidence to support the board. *Arkadelphia Fed. Sav. & Loan Ass'n v. Mid-South Sav. & Loan Ass'n*, 265 Ark. 860, 581 S.W.2d 345 (1979).

The question of whether the board's action on a charter application was arbitrary and capricious is a narrow one, more restrictive than the "substantial evidence" test, and is only applicable where the board decision is not supported on any rational basis; to set aside a board decision on that basis, it must be willful and unreasoning and in disregard of the facts and circumstances of the case. *Arkadelphia Fed. Sav. & Loan Ass'n v. Mid-South Sav. & Loan Ass'n*, 265 Ark. 860, 581 S.W.2d 345 (1979).

Cited: *First State Bldg. & Loan Ass'n v. Arkansas Sav. & Loan Bd.*, 257 Ark. 599, 518 S.W.2d 507 (1975); *West Helena Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 553 F.2d 1175 (8th Cir. 1977); *Bank of Yellville v. First Am. Sav. & Loan Ass'n*, 276 Ark. 292, 634 S.W.2d 122 (1982).

23-37-311. Failure to commence business — Cancellation of charter.

(a) Within one (1) year after the date of the action of the Savings and Loan Association Board [abolished] granting the charter, the association shall furnish satisfactory evidence to the Supervisor of Savings and Loan Associations that it has commenced business. If the order of the board granting the charter of any action regarding insurance of its accounts is appealed to one (1) or more state or federal courts, the association shall show proof that it has commenced business within one (1) year after the conclusion of the litigation.

(b)(1) If any association fails to commence business within the one-year period and the supervisor so finds after notice and hearing, he or she shall enter an order cancelling the charter unless good cause is shown for the failure, in which event the supervisor shall grant a reasonable extension of time for commencing business, not to exceed two (2) years, to give the association the opportunity to overcome the cause for delay.

(2) No charter shall be cancelled during the pendency of any litigation in any state or federal court regarding the charter, the operation, or the insurance of the accounts of a savings and loan association.

(c) The supervisor shall file a copy of any order cancelling a savings and loan association charter with the Secretary of State and with the county clerk of the county in which the home office of the association is located.

(d) Parties other than the affected association shall not be heard regarding any extension of time of an association's charter. However,

any party which appeared before the board protesting the granting of the charter shall, upon written request, be notified of the determination of the supervisor on the extension request.

History. Acts 1963, No. 227, § 26; 1975, No. 531, § 3; 1977, No. 350, § 1; A.S.A. 1947, § 67-1826.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Asso-

ciations.

Publisher's Notes. Acts 1977, No. 350, § 2, provided that the act should apply to all savings and loan associations which were granted charters but had not yet commenced business as of March 3, 1977, and as to which orders cancelling their charters had not become final.

CASE NOTES

ANALYSIS

Commencement of Business.
Discretion of Supervisor.

Commencement of Business.

This section does not deal with the granting of charters but deals with the revocation of charters for failure to commence business, and procurement of an indemnity bond or paying annual fees are not specified as prerequisites for commencing business. *Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n*, 260 Ark. 326, 538 S.W.2d 560 (1976).

Discretion of Supervisor.

It was an abuse of the supervisor's discretion not to grant an extension but rather cancel the charter of an association that had qualified in all respects other than procurement of deposit insurance from Federal Savings and Loan Insurance Corporation, where the association had suit pending to require issuance of such insurance. *Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n*, 260 Ark. 326, 538 S.W.2d 560 (1976).

Cited: *West Helena Sav. & Loan Ass'n v. Federal Home Loan Bank Bd.*, 553 F.2d 1175 (8th Cir. 1977).

23-37-312. Amendment of charter and bylaws.

By resolution adopted by a majority vote of its members if a mutual association, or by its stockholders if a permanent stock association, at any annual meeting or special meeting called for that purpose, any association may amend its articles of incorporation or bylaws in any manner not inconsistent with the provisions of this chapter. However, before the amendments become effective, they must be filed with, and approved by, the Supervisor of Savings and Loan Associations.

History. Acts 1963, No. 227, § 27; A.S.A. 1947, § 67-1827.

23-37-313. Changes in name, location, etc.

(a) No association shall, without the prior approval of the Savings and Loan Association Board [abolished] or Supervisor of Savings and Loan Associations:

(1) Establish any branch office other than the principal office stated in its articles of incorporation;

(2) Move any principal office or branch office of the association beyond two (2) miles of its original location; or

(3) Change its name.

(b)(1) When approval is applied for, the supervisor shall give written notice, as required by this chapter and the rules of the board, to every state or federal association whose home office is located in the same county or whose home office is in a county adjoining the county in which the home office of the petitioning association is located.

(2) If no protest is received within the time set forth by this chapter and by the board in its rules, the supervisor may approve or deny the establishment or move of any branch office, move of a home office, or a change of name.

(c) An association may not move its home office from the county in which its home office was originally located.

History. Acts 1963, No. 227, § 29; 1975, No. 531, § 4; 1979, No. 361, § 7; A.S.A. 1947, § 67-1829.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Pitts, Interstate Banking and State Wide Branching in Arkansas: Act 12 of the 76th Arkansas

General Assembly, 11 U. Ark. Little Rock L.J. 457.

23-37-314. Indemnity bonds of directors, officers, and employees.

(a) Every association shall maintain on file with the Supervisor of Savings and Loan Associations an effective blanket indemnity bond with a corporate surety protecting the association from loss by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, holdup, wrongful or unlawful abstraction, misappropriation, or any other dishonest or criminal action or omission by any director, officer, or employee of the association.

(b) Associations which employ collection agents, who for any reason are not covered by a bond as required in subsection (a) of this section, shall provide for the bonding of each collection agent in an amount equal to at least twice the average monthly collection of the agent. Collection agents shall be required to make settlement with the association at least monthly. No bond coverage will be required of any agent which is a bank insured by the Federal Deposit Insurance Corporation or an institution insured by the Federal Savings and Loan Insurance Corporation [abolished].

(c) The amounts and forms of the bonds and sufficiency of the surety thereupon shall be approved by the supervisor. All of the bonds shall provide that a cancellation thereof either by the surety or the insured shall not become effective unless and until thirty (30) days' notice in writing first shall have been given to the supervisor, unless he or she approves the cancellation earlier.

History. Acts 1963, No. 227, § 33; A.S.A. 1947, § 67-1833.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

CASE NOTES

Cited: Arkansas Sav. & Loan Ass'n Bd. v. West Helena Sav. & Loan Ass'n, 260 Ark. 326, 538 S.W.2d 560 (1976).

23-37-315. Corporate name.

(a)(1) The name of every new association organized under this chapter shall include either the words "savings and loan association" or "building and loan association".

(2) These words shall be preceded by appropriate descriptive words approved by the Savings and Loan Association Board [abolished].

(3) An ordinal number may not be used as a single descriptive word preceding the words "savings and loan association" or "building and loan association" unless such words are followed by the words "of ____," the blank being filled by the name of the town, city, or county in which the association has its home office.

(4) The words "national", "federal", "United States", "insured", "guaranteed", or any form thereof, separately or in any combination thereof with other words or syllables, may not be used as part of the corporate name of an association organized under this chapter.

(b) A charter shall not be granted to a proposed association having the same name as any other association or federal savings and loan association authorized to do business in this state or a name so nearly resembling it as to be calculated to deceive, except an association formed by a reincorporation, reorganization, or consolidation of other associations, or upon the sale of the property or franchise of an association.

(c) No person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless authorized to do business in this state under the provisions of this chapter, shall do business under any name or title which indicates, or reasonably implies, that the business is the character or the kind of business carried on or transacted by an association, or which is calculated to lead any person to believe that the business is that of an association.

(d) Upon application by the Supervisor of Savings and Loan Associations or by any affected association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the foregoing provisions of this section.

History. Acts 1963, No. 227, § 28; A.S.A. 1947, § 67-1828.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-316. Standards of conduct.

(a) A director of a state-chartered savings and loan association or federal savings bank shall discharge his or her duties as a director, including his or her duties as a member of any committees:

(1) In good faith;

(2) With the care an ordinary prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interest of the savings and loan association or federal savings bank.

(b) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the savings and loan association whom the director reasonably believes to be reliable and competent in matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance on the information or data described in subsection (b) of this section unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

History. Acts 1993, No. 990, § 1.

SUBCHAPTER 4 — OPERATION GENERALLY**SECTION.**

23-37-401. Powers commensurate with federal associations.

23-37-402. Authority to act as trustee for certain trusts.

23-37-403. Dividends.

SECTION.

23-37-404. Branch offices.

23-37-405. Membership charges prohibited.

23-37-406. Payment of commission on sale of stock.

Effective Dates. Acts 1963, No. 227, § 65; Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and that the immediate passage of this act is

necessary to correct such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 144, § 2; Feb. 24, 1967. Emergency clause provided: "It is hereby found and declared by the General Assem-

bly of the State of Arkansas that federal savings and loan associations operating in this State have been authorized to pay special dividends, variable dividends and to adopt dividend policies that are not authorized for savings and loan associations chartered under the laws of Arkansas; that the difference in dividend policies of state and federal savings and loan associations is unduly restrictive on state savings and loan associations, and that this situation is to the detriment of public health, safety and welfare, and that only by the immediate operation of this act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this act being necessary for the public health, peace and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 242, § 2: Mar. 12, 1969. Emergency clause provided: "It has been found and determined that federal associations doing business in this State have and will have an unfair competitive advantage over associations chartered by this State and that it is imperative to immediately remove such unfair competitive advantage. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its passage and approval."

Acts 1975, No. 531, § 16: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Savings and Loan Association Board and the Arkansas Savings and Loan Association Supervisor do not sufficiently define such authority and that such condition has greatly handicapped the Board and Supervisor in the proper administration of their duties as to defining in a reasonable manner the time allowed for an association to commence business from the effective date of its grant of authority, as to the fees presently charged by the Board and Supervisor and as to general regulatory matters under the review of the Board and Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 595, § 4: Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of Arkansas savings and loan associations to act as trustees under the so called "Keough Act" is ambiguous and that said associations should have such authority to act immediately and that therefore an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 444, § 6: Mar. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that confusion exists regarding several statutes relating to the administrative functions of the Supervisor of the Savings and Loan Board and a conflict between the Building and Loan Act and the Savings and Loan Act and that such confusion is detrimental to the welfare of the citizens of this State and that this Act is immediately necessary to eliminate such confusion. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (4th Ex. Sess.), No. 2, § 10 and No. 12, § 10: July 15, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that changes in the banking industry, and changes in the Federal banking laws, make it immediately necessary to amend the banking laws of this state to permit Arkansas banking institutions to maintain their competitive position with banks in the region and to make available a supply of funds needed for the community, business and economic expansion of this state through regional reciprocal interstate banking; that amendments to the branch banking laws of the state are immediately necessary to authorize county-wide branch banking and to provide for the orderly expansion of branch banking, after a period of time, outside the county, and to authorize statewide branch banking after a defined period of time; that clarification is needed with respect to existing laws of this state relating to state-chartered savings and loan associations;

that clarification of the laws governing the authority of the Bank Commissioner to make orderly and sound decisions related to failed and failing banks if necessary to protect the public of this state against financial losses; and that the immediate passage of this Act is necessary for the clarification of the banking laws to preserve the safety and soundness of the Arkansas state banking system. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety should be in force and effective as follows: Section 1 of this Act shall be effective the earlier of (i) January 1, 1989, or (ii) the date on which

a state or states having twenty percent (20%) or more of the total deposits of Banks within the Region, excluding Arkansas, have enacted and have in effect statutes which permit Arkansas Bank Holding Companies to acquire Banks and Bank Holding Companies in such state, whichever occurs sooner. For purposes of this Section, the total deposits of Banks within the Region shall be determined by the Bank Commissioner of the State of Arkansas by reference to the Spring 1988 issue of Polk's World Bank Directory, published by R. L. Polk and Company. The remaining Sections of this Act shall be effective immediately upon its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 42 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 66 et seq.

23-37-401. Powers commensurate with federal associations.

Irrespective of any limitations contained in this chapter, the Supervisor of Savings and Loan Associations may adopt rules and regulations authorizing or empowering any association chartered or operating under the provisions of this chapter to:

(1) Pay or give any premium or other concession for the opening or increasing of a savings account to the same extent that the payment of premiums or the granting of other concessions may be authorized for a federal association doing business in this state;

(2) Designate the legal relationship between the association and the holder of a savings account with the association and the name to be given the savings account in any advertising or public description of the savings account to the same extent that those designations and legal relationships are authorized for a federal association doing business in this state;

(3) Adopt any dividend or interest paying date or other procedure or practice with respect to the paying of interest or dividends authorized for a federal association doing business in this state;

(4) Adopt any business practice, procedure, method, or system authorized by a federal association doing business in this state, except nothing herein will permit an extension of a state savings and loan association's branching authority beyond the limitations of state law; and

(5) Make any loan or investment that a federal association doing business in this state is authorized to make.

History. Acts 1963, No. 227, § 58; 1969, No. 242, § 1; A.S.A. 1947, § 67-1858; Acts 1988 (4th Ex. Sess.), No. 2, § 8; 1988 (4th Ex. Sess.), No. 12, § 8; 2001, No. 1553, § 35.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Pitts, Interstate Banking and State Wide Branching in Arkansas: Act 12 of the 76th Arkansas

General Assembly, 11 U. Ark. Little Rock L.J. 457.

CASE NOTES

ANALYSIS

Effect of Section.

Practices Authorized for Federal Associations.

Effect of Section.

This section and rules adopted thereunder clearly place state savings and loan associations on the same footing as federally chartered associations doing business in this state. *Schulte v. Benton Sav. & Loan Ass'n*, 279 Ark. 275, 651 S.W.2d 71 (1983).

Practices Authorized for Federal Associations.

Since federally chartered associations may enforce due on sale clauses in cases without the requirement of showing that the security is impaired, it follows that state associations are duly empowered to do the same. *Schulte v. Benton Sav. & Loan Ass'n*, 279 Ark. 275, 651 S.W.2d 71 (1983).

23-37-402. Authority to act as trustee for certain trusts.

(a) A savings and loan association created pursuant to the laws of the United States or the State of Arkansas may act as trustee, and may receive reasonable compensation for so acting, of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under § 401(d) or § 408(a) of the Internal Revenue Code of 1954 if the funds of the trust are invested only in savings accounts or deposits in the association or in obligations or securities issued by the association. However, no association may invest any trust funds in its own common or preferred stock.

(b) All funds held in a fiduciary capacity by any association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this section.

(c) A savings and loan association within this state acting pursuant to this section shall not be deemed to be acting as an investment adviser within the meaning of the Arkansas Securities Act, § 23-42-101 et seq.

History. Acts 1975, No. 595, §§ 1, 2; A.S.A. 1947, §§ 67-1867, 67-1868.

U.S. Code. Sections 401(d) and 408(a) of the Internal Revenue Code, referred to

in this section, are codified as 26 U.S.C. §§ 401(d) and 408(a).

Cross References. Deposit of trust funds, § 28-69-206.

23-37-403. Dividends.

(a)(1) After providing for payment of the expenses of operation of the association and for the required minimum transfer to its general loss reserves on each closing day as prescribed by the Supervisor of Savings and Loan Associations, the board of directors of an association may declare a dividend on savings accounts of record on the last business day of March, June, September, and December. The dividends shall be payable as of the dividend date or at a later date not more than thirty (30) days following the dividend date.

(2) Dividends shall be declared on the withdrawal value of each savings account at the beginning of the dividend period, plus additions thereto made during the dividend period less amounts withdrawn, which for dividend purposes shall be deducted from the latest previous additions thereto, computed at the declared rate for the time invested.

(3) For dividend purposes, the date of investment shall be the date fixed by the board of directors of an association with the approval of the Savings and Loan Association Board [abolished] which shall be not later than thirty (30) days after or prior to the date of actual receipt by the association of an account or an addition to an account.

(4) Dividends shall be credited to savings accounts on the books of the association unless the association shall have agreed to pay dividends on all or any part of any savings account in cash.

(5) All savings account holders shall participate equally in dividends pro rata to the withdrawal value of their savings accounts; no association shall be required to pay or credit dividends on accounts of ten dollars (\$10.00) or less.

(b) With the approval of the Savings and Loan Association Board [abolished], a savings and loan or building and loan association operating under authority of the statutes of Arkansas may pay to the holders of its savings accounts any rate of dividend, or bonus, or special dividend, or classify its savings accounts for the purpose of paying a differential or variable dividend, or adopt any other dividend policy that is authorized for federal associations operating in this state, irrespective of any limitation contained in this chapter or other laws of this state.

History. Acts 1963, No. 227, § 60; 1967, No. 144, § 1; A.S.A. 1947, §§ 67-1860, 67-1860.1.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-404. Branch offices.

(a) The Supervisor of Savings and Loan Associations in either a protested or an unprotested application shall not approve the application for an association to open a branch unless the association satisfactorily establishes that the volume of business in the proposed service area for the branch office is such as to indicate a successful operation.

(b) An association shall furnish satisfactory evidence to the supervisor that it has opened a branch office for business within one (1) year from:

(1) The date the granting of authority for the opening of the branch office is approved by the Supreme Court if the matter is appealed to the Supreme Court; or

(2) The date on which the time period for perfecting an appeal from a decision of the supervisor or a lower court approving the granting of authority for opening of the branch office expires.

(c)(1) If any association fails to open the branch office for business within the one-year period as required by subsection (b) of this section and the supervisor so finds after notice and hearing, the supervisor shall enter an order cancelling the authority for opening of the branch office for business unless good cause is shown for the failure, in which event the supervisor shall grant a reasonable extension of time for opening the branch office for business, not to exceed one (1) year, to give the association an opportunity to overcome the cause for the delay.

(2)(A) Parties other than the affected association shall not be heard regarding any extension of authority for opening a branch office.

(B) However, any party that appeared before the supervisor protesting the granting of authority for opening the branch office for business shall be notified upon written request of the determination of the supervisor on the extension request.

(d)(1) If any association closes a branch office and the branch office remains closed for one (1) year, the supervisor after notice and hearing shall enter an order cancelling the authority for continued operation of that branch unless good cause is shown for the failure to continue operation. In this event the supervisor shall grant a reasonable extension of time for reopening the branch for business, not to exceed one (1) year.

(2) Parties other than the affected association shall not be heard regarding any extension of time to reopen the closed branch.

(e) Any association legally chartered by the proper state authority may establish one (1) or more full service branches, provided that its supervisory authority approves, in the following locations:

(1) Anywhere within the county in which the establishing savings and loan association's principal office is located;

(2) In addition to the provision of subsection (d) of this section, after December 31, 1993, anywhere within any counties contiguous to the county in which its principal office is located; and

(3) After December 31, 1998, anywhere within this state.

(f)(1) Without regard to the exceptions for location of a branch of an association as provided in this section, an association may purchase the business and assets and assume the liabilities of or merge or consolidate with another association located in any incorporated city or town within this state and operate the acquired association as a branch, provided that a branch shall not be established pursuant to purchase, merger, or consolidation with another association should either association have a de novo charter.

(2)(A) As used in this section, “de novo charter” means a charter for an association that has been in existence for less than ten (10) years.

(B) However, a de novo charter does not include a charter that is issued in connection with the acquisition of assets and liabilities from a predecessor financial institution that is acquired through federal or state regulatory action.

(g) Nothing contained in this section shall be construed to prevent any association from retaining branch locations, wherever located, in operation prior to June 30, 1988.

History. Acts 1975, No. 531, §§ 12, 13; Acts 1988 (4th Ex. Sess.), No. 2, § 7; 1988 1979, No. 361, §§ 11, 12; 1981, No. 444, (4th Ex. Sess.), No. 12, § 7; 2001, No. § 3; A.S.A. 1947, §§ 67-1865, 67-1866; 1553, § 36.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Derden, Survey of Arkansas Law: Administrative Law, 2 U. Ark. Little Rock L.J. 157.
 Pitts, Interstate Banking and State Wide Branching in Arkansas: Act 12 of the 76th Arkansas General Assembly, 11 U. Ark. Little Rock L.J. 457.
 Survey, Banks and Banking, 14 U. Ark. Little Rock L.J. 277.

CASE NOTES

Evidence. Evidence sufficient to find that trial court erred in reversing board’s decision approving the establishment of the branch office. Northwest Sav. & Loan Ass’n v. Fayetteville Sav. & Loan Ass’n, 262 Ark. 840, 562 S.W.2d 49 (1978).
Cited: White County Guar. Sav. & Loan Ass’n v. F & M Bank, 262 Ark. 893, 562 S.W.2d 582 (1978).

23-37-405. Membership charges prohibited.

(a) No association shall directly or indirectly charge any membership, admission, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association, except charges upon the making or modification of a loan.

(b) No association shall charge any member any sum of money by way of fine or penalty for any cause, except for charges made against borrowers for defaults or prepayments.

History. Acts 1963, No. 227, § 34; A.S.A. 1947, § 67-1834.

23-37-406. Payment of commission on sale of stock.

An association shall pay no fee, commission, or other remuneration to any person for the sale of its permanent capital stock without prior approval of the Savings and Loan Association Board [abolished].

History. Acts 1963, No. 227, § 32; 1981, No. 444, § 2; A.S.A. 1947, § 67-1832.
A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Asso-

ciations.

SUBCHAPTER 5 — SAVINGS ACCOUNTS

SECTION.

- 23-37-501. Accounts of minors.
- 23-37-502. Accounts in the names of two or more persons.
- 23-37-503. Accounts of fiduciaries.
- 23-37-504. Accounts of deceased nonresidents.
- 23-37-505. Withdrawals generally.
- 23-37-506. Conflicting claims to accounts.
- 23-37-507. Damages for refusal to pay withdrawal request.

SECTION.

- 23-37-508. Power of attorney.
- 23-37-509. Lien on account of borrower — Pledge of third party's account as security on loan.
- 23-37-510. Validity of release or acquittance by officers of corporation or association.
- 23-37-511. [Repealed.]
- 23-37-512. Legal investments in accounts.

Effective Dates. Acts 1963, No. 227, § 65: Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and

that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 74 et seq.

23-37-501. Accounts of minors.

(a) An association and any federal association may accept savings accounts from any minor, as the sole and absolute owner of the savings account, and receive payments thereon by or for the owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to the accounts on the order of the minor.

(b) Any payment or delivery of rights to a minor, or a receipt or acquittance signed by a minor shall be a valid and sufficient release and discharge of the association for the payment so made or delivery of rights. The receipt, acquittance, pledge, or other action taken by the minor shall be binding upon the minor with like effect as if he or she were of full age and legal capacity. However, if either parent or guardian of the minor advises an association in writing that the minor shall not have unrestricted authority to deal with his or her savings account, during the minority of the minor, the minor shall not be authorized to deal with his or her savings account except with the joinder of a parent or guardian.

(c) In the event of the death of the minor, the receipt or acquittance of one (1) parent or the guardian of the minor shall be valid and sufficient discharge of the association.

(d) With respect to a minor under twelve (12) years of age, the receipt, acquittance, pledge, or other action required by the association may be taken by one (1) parent or the person standing in loco parentis to the minor.

History. Acts 1963, No. 227, § 37;
A.S.A. 1947, § 67-1837.

23-37-502. Accounts in the names of two or more persons.

Savings accounts may be opened in any association or a federal association in the names of two (2) or more persons, either minor or adult, or a combination of minor and adult, and the savings accounts may be held as follows:

(1)(A) If the person opening the savings account fails to designate in writing the type of account intended, or if he or she designates in writing to the association that the account is to be a “joint tenancy” account or a “joint tenancy with right of survivorship” account, or that the account shall be payable to the survivors of the persons named in the account, then the account and all additions thereto shall be the property of those persons as joint tenants with right of survivorship.

(B) These savings accounts may be paid to or on the order of any one (1) of the persons during his or her lifetime, unless a contrary written designation is given the association, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them.

(C) The opening of the account in this form shall be conclusive evidence in any action or proceeding to which either the association or the surviving parties is a party, of the intention of all of the parties to the account to vest title to the account and the additions thereto in the survivors.

(D) No association paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state;

(2) If the savings account is opened in the names of persons who designate themselves to the association as husband and wife, whether or not they are at the time in fact husband and wife, then the account and all additions thereto shall be the property of those persons as tenants by the entirety. Upon the death of one (1) of the persons, the account shall be payable to the survivor;

(3) If the person opening a savings account designates in writing to the association that the account is to be a “tenants in common” account, then the account and all additions thereto shall be the property of those persons as tenants in common. The association, upon receipt of a specific written notice addressed to the association of the death of either

party shall pay, upon the written order of the survivor, to the survivor, his or her pro rata part of the account and to the estate of the deceased owner, the deceased's pro rata part of the account. However, the association may pay the entire account and all additions thereto upon the receipt or acquittance of either party to the account prior to the time that a specific written notice of death is received as provided herein unless there has been filed with the association a written designation that more than one (1) signature is required to deal with the account. In the absence of any written designation to the contrary filed with the association, all tenants in common accounts shall be deemed to be owned pro rata by the persons named in the account;

(4) If a savings account is opened in the name of two (2) or more persons, whether as joint tenants, tenants by the entirety, tenants in common, or otherwise, an association shall pay withdrawal requests, accept pledges of the account, recognize the granting of proxies to vote as members of the association, and otherwise deal in any manner with the account upon the direction of any one (1) of the persons named in the account, whether the other persons named in the account are living or not, unless one (1) of the persons named in the account shall, by written instructions delivered to the association, designate that the signature of more than one (1) person shall be required to deal with the savings account; or

(5) If a person opening or holding a savings account shall execute and file with the association a designation that on the death of the person named as holder the account shall be paid to or held by another person, the account and any balance thereof which exists from time to time shall be held as a payment on death account and unless otherwise agreed between the persons opening the account and the association:

(A) Upon the death of the holder of the account, the persons designated by him or her and who have survived him or her shall be the owners of the account as joint tenants with right of survivorship, if more than one (1). Any payment made by the association to any of those persons shall be a complete discharge of the association as to the amount paid;

(B) The person to whom the account is issued may change during his or her lifetime the designation of any of the persons who are to be holders at his or her death, by a written direction accepted by the association;

(C) The person to whom the account is issued may pledge, withdraw, or receive payment. Any payment made by the association shall be a complete discharge as to the amount paid.

History. Acts 1963, No. 227, § 38;
A.S.A. 1947, § 67-1838.

RESEARCH REFERENCES

Ark. L. Rev. Joint Tenancy — Right of Survivorship — “Four Unities,” 23 Ark. L. Rev. 136.

Tenancies by the Entirety — An Estate Planner’s Dilemma (A Study of Unintended Result), 23 Ark. L. Rev. 44.

Note, The Creation of Joint Tenancy in Bank Accounts: The Old, the New, and the Uncertain, 44 Ark. L. Rev. 199.

CASE NOTES

ANALYSIS

Note.

Applicability.

Amendment.

Assignment of Funds.

Constructive Trust.

Creditor’s Rights.

Designation of Beneficiary.

Designation of Payee on Death.

Joint Tenancy.

Pay-On-Death Designations.

Person Opening Account.

Restoration of Funds.

Writing Required.

Note.

For cases discussing deposits in two or more names under Acts 1937, No. 260, § 1, as amended (superseded), see *Black v. Black*, 199 Ark. 609, 135 S.W.2d 837 (1940) *Questioned by* *Nall v. Duff*, 305 Ark. 5, 805 S.W.2d 63 (1991); *Harbour v. Harbour*, 207 Ark. 551, 181 S.W.2d 805 (1944); *Pye v. Higgason*, 210 Ark. 347, 195 S.W.2d 632 (1946); *Powell v. Powell*, 222 Ark. 918, 263 S.W.2d 708 (1954); *Vincent v. Vincent*, 224 Ark. 449, 274 S.W.2d 772 (1955); *Tesch v. Miller*, 227 Ark. 74, 296 S.W.2d 392 (1956); *Park v. McClemens*, 231 Ark. 983, 334 S.W.2d 709 (Ark. 1960); *McGuire v. Benton State Bank*, 232 Ark. 1008, 342 S.W.2d 77 (1961); *Von Tungeln v. Chapman*, 233 Ark. 219, 343 S.W.2d 782 (1961); *Beyer v. Pope*, 236 Ark. 443, 366 S.W.2d 716 (1963); *Ratliff v. Ratliff*, 237 Ark. 191, 372 S.W.2d 216 (1963); *Robertson v. Phillips*, 240 Ark. 221, 398 S.W.2d 889 (1966) *Questioned by* *Zunamon v. Stevenson*, 247 Ark. 248, 445 S.W.2d 102 (Ark. 1969); *Dalton v. Eyestone*, 240 Ark. 1032, 403 S.W.2d 730 (1966); *Cook v. Beville*, 246 Ark. 805, 440 S.W.2d 570 (1969); *Hase-man v. Union Bank*, 262 Ark. 803, 562 S.W.2d 45 (1978); *Boling v. Gibson*, 266 Ark. 310, 584 S.W.2d 14 (1979).

Applicability.

This section governs the disposition of joint accounts established after its effective date. *Harris v. Searcy Fed. Sav. & Loan Ass’n*, 241 Ark. 520, 408 S.W.2d 602 (1966).

Amendment.

Section 23-32-1005 did not amend this section. *Snow v. Martensen*, 257 Ark. 937, 522 S.W.2d 371 (1975).

Assignment of Funds.

Depositor had prima facie right, under terms of this section, to assign funds in joint account. *Pine Bluff Nat’l Bank v. Parker*, 253 Ark. 966, 490 S.W.2d 457 (1973).

Where the bank reported the account to be in the name of the debtor, accepted the assignment of the account and caused the secured party to release its collateral, the appellee was liable to pay to secured party an amount equal to the garnishment. *Pine Bluff Nat’l Bank v. Parker*, 253 Ark. 966, 490 S.W.2d 457 (1973).

Constructive Trust.

Constructive trust held properly imposed upon funds. *Savage v. McCain*, 21 Ark. App. 50, 728 S.W.2d 203 (1987).

Creditor’s Rights.

A third party may execute against a spouse’s interest in a tenancy by the entirety, subject to the other spouse’s continued rights of possession and survivorship, and interest in one-half of the rents and profits. *Morris v. Solesbee*, 48 Ark. App. 123, 892 S.W.2d 281 (1995).

Designation of Beneficiary.

Since the depositor still retained the original certificate of deposit in her possession at the time of her death, it cannot be said that she intended to follow through with a change in beneficiaries, where the association never accepted the

change in beneficiaries, and therefore the necessary documents to effect the transfer were never completed. *Wilson v. White*, 265 Ark. 444, 578 S.W.2d 577 (1979).

In the absence of a depositor meeting the minimum statutory requirements, his intent concerning designation of the beneficiary is no longer controlling in the creation of an account. *Rascoe v. Rascoe*, 265 Ark. 371, 578 S.W.2d 892 (1979).

Designation of Payee on Death.

A proxy card in the name of "J.D. Nolen, payable in case of death to Thucie Nolen," appointing the president of the association as the holder's proxy to vote in meetings of the association, signed by J.D. Nolen, was sufficient designation under subdivision (5) of this section. *Cupp v. Pocahontas Fed. Sav. & Loan Ass'n*, 242 Ark. 566, 414 S.W.2d 596 (1967).

In order for a savings account in a bank or savings and loan association to be payable on the depositor's death to a third person, the depositor must designate in writing that the account is so payable. *McDonald v. Treat*, 268 Ark. 52, 593 S.W.2d 462 (1980).

A certificate of deposit in the name of a husband payable on death to his wife was properly awarded to the husband's estate upon his death where his wife had predeceased him since survival of the designated beneficiary is a requirement under subdivision (5) of this section. *Luecke v. Mercantile Bank*, 286 Ark. 304, 691 S.W.2d 843 (1985).

Joint Tenancy.

One who changes his account to a joint account does not hereby give a vested interest in the account to a joint tenant, and thus he may later change the account back to his on name. *Beyer v. Pope*, 236 Ark. 443, 366 S.W.2d 716 (1963) (decision under prior law).

Where the daughter of the deceased owner of funds opened an account in the names of deceased and herself there was insufficient evidence to establish a joint tenancy with rights of survivorship where there was no showing that the deceased was ever aware of the transaction or consented to the opening of the account, did not sign the signature card and died 5 days after the opening of said account. *Snow v. Martensen*, 257 Ark. 937, 522 S.W.2d 371 (1975).

When the decedent and another signed certificates of deposits creating a joint tenancy with a right of survivorship the proceeds of the certificates belonged to the survivor and not to decedent's estate notwithstanding the fact that the original proceeds used to purchase the certificates belonged to the decedent alone and new signature cards were not resigned when the certificates matured and new certificates purchased. *Penn v. Penn*, 284 Ark. 562, 683 S.W.2d 930 (1985).

Sister's reliance on a presumption under this section that opening a savings account in the name of two or more persons was evidence that both parties intended to vest title in the account to the survivor upon the death of the other was misplaced because such reliance ignored a trial court's finding that a signature card to an account held in her brother's name was ambiguous with regard to ownership of the account as it listed her brother as the account owner but contained both his signature and the sister's signature; the trial court did not err in finding an ambiguity and considering extrinsic evidence. *Bolding v. Norsworthy*, 101 Ark. App. 88, 270 S.W.3d 394 (2007), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 290 (May 1, 2008).

Pay-On-Death Designations.

Statute-based precedents, including this section, § 23-37-502, and § 23-81-116 do not undermine *Coley v. English*, 235 Ark. 215, 357 S.W.2d 529 (1962), or similar cases; only the state supreme court can say whether the now-ready availability of pay-on-death designations, insurance products, and other legally effective transfers of future and contingent interests in property has so eroded the line of cases exemplified by *Coley* that the common law has changed. *Miller v. Cothran*, 102 Ark. App. 61, 280 S.W.3d 580 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 580 (Sept. 4, 2008).

Person Opening Account.

The words "person opening the account" as used in subsection (1) of this section means the person who owns the money with which the account is being opened in the names of more than one person. *Snow v. Martensen*, 257 Ark. 937, 522 S.W.2d 371 (1975).

Restoration of Funds.

Where an officer of the savings and loan association testified that the association did not have any document signed by the decedent indicating how the account was to be paid out upon her death, the probate court properly found that the payment of funds to one niece was improper and that the funds had to be restored to the decedent's estate, despite the claims of the recipient of the funds, inter alia, that the documents signed by the decedent with respect to two other accounts were sufficient to indicate that she was to receive

this account. *McDonald v. Treat*, 268 Ark. 52, 593 S.W.2d 462 (1980).

Writing Required.

The requirement of a written designation means that the depositor must affix his signature to an instrument stating his intention. *McDonald v. Treat*, 268 Ark. 52, 593 S.W.2d 462 (1980).

Cited: *Cook v. Beville*, 246 Ark. 805, 440 S.W.2d 570 (1969); *Willey v. Murphy*, 247 Ark. 839, 448 S.W.2d 341 (1969); *Gibson v. Boling*, 274 Ark. 53, 622 S.W.2d 180 (1981); *Jones v. Robinson*, 297 Ark. 580, 764 S.W.2d 610 (1989).

23-37-503. Accounts of fiduciaries.

(a) An association or a federal association may accept savings accounts in the name of any administrator, executor, custodian, guardian, trustee, or other fiduciary, with or without the designation of the name of the beneficiary or the court order creating the fiduciary relationship. The fiduciary shall have power to vote as a member, to open and make additions to, and to withdraw from the savings account in whole or in part.

(b)(1) The payment or delivery of rights to the fiduciary or a receipt or acquittance signed by the fiduciary to whom any payment or delivery of rights is made shall be a valid and sufficient release and discharge of an association.

(2) If the savings account is in the name of more than one (1) fiduciary, the payment to only one (1) fiduciary or a receipt or acquittance signed by only one (1) fiduciary to whom any payment is made shall be a valid and sufficient release and discharge of an association for the payment so made, unless the written savings agreement filed with the association provides otherwise.

(c) Unless the written agreement or court order filed with the association at the time an account is opened by a fiduciary provides otherwise, the association may make loans on the security of the savings account, pay withdrawals to the fiduciary personally or as directed by him or her, and otherwise deal with the account, in whole or in part, without regard to any notice to the contrary, as directed by the fiduciary, so long as the fiduciary is living, or if two (2) or more fiduciaries are designated, so long as one (1) fiduciary is living.

(d) Whenever a person holding an account in a fiduciary capacity dies and no written notice or order of the circuit court of the revocation or termination of the fiduciary relationship has been given to the association and the association has no written notice of an order of the circuit court of any other disposition of the beneficial estate, the withdrawal value of the account and dividends thereon or other rights relating thereto may, at the option of the association, be paid or delivered, in whole or in part, to the beneficiary, and the association shall have no further liability therefor.

History. Acts 1963, No. 227, § 40;
A.S.A. 1947, § 67-1840.

CASE NOTES

ANALYSIS

Construction.

Fiduciary Capacity.

Nature of Institutions.

Construction.

This section is in derogation of the common law and is to be strictly construed. *Carmichael v. Security Sav. & Loan Ass'n*, 264 Ark. 657, 574 S.W.2d 651 (1978).

Fiduciary Capacity.

The authorization of a pledge of a certificate or account by one of two joint tenants is inapplicable where pledge of a fiduciary account to secure a loan to the fiduciary fails to mention his guardian-

ship capacity, no order of court authorized it, and no record indicates the loan was made for the benefit of the ward; rather the legislature did not intend the savings and loan to participate in the guardian's self-dealing to the detriment of the ward and cannot offset the guardian's debt from a joint deposit, owed to the ward at the guardian's death. *Carmichael v. Security Sav. & Loan Ass'n*, 264 Ark. 657, 574 S.W.2d 651 (1978).

Nature of Institutions.

For the purpose of this section, there is no difference between banks and savings and loan institutions. *Carmichael v. Security Sav. & Loan Ass'n*, 264 Ark. 657, 574 S.W.2d 651 (1978).

23-37-504. Accounts of deceased nonresidents.

(a) When a savings account is held in any association or federal association by a person residing in another state or country, the account, together with additions thereto and earnings thereon, or any part thereof, may be paid to the administrator or executor appointed in the state or country where the account holder resided at the time of death if the administrator or executor has furnished the association with:

(1) Authenticated or certified copies of his or her letters; and

(2) An affidavit by the administrator or executor that, to his or her knowledge, no letters then are outstanding in this state and no petition for letters is pending on the estate in this state, and that there are no creditors of the estate in this state.

(b) Upon payment or delivery to the representative after receipt of the affidavit and authenticated copies, the association shall be released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator, and the association shall not be required to see to the application or disposition of the property.

(c) No action at law or in equity shall be maintained against the association for payment made in accordance with this section.

History. Acts 1963, No. 227, § 42;
A.S.A. 1947, § 67-1842.

23-37-505. Withdrawals generally.

(a) Any savings account holder may, at any time, present a written application for withdrawal of all or any part of his or her savings account except to the extent the account may be pledged to the association or to another person on the books of the association.

(b)(1) An association may pay, in full, each and every withdrawal request as presented, without requiring that written application therefor be made.

(2) At any time the board of directors of an association finds it to be in the best interest of the association, the board may, by proper resolution, require a written notice of not exceeding sixty (60) days before paying withdrawals, in which event no withdrawal request shall be paid until the expiration of the time for giving notice fixed by the board of directors.

(3) Upon the same day the resolution to require notice is made effective, the association shall notify the Supervisor of Savings and Loan Associations by telephone or telegraph that the resolution is in effect.

(c)(1) In the event the Savings and Loan Association Board [abolished] makes an affirmative finding that a period of great financial stress or other emergency exists, either generally or in a specific locality in this state, or for a specific association, it may, with the approval of the Governor, restrict the right of an association to pay withdrawals, to the extent and in the manner which the board finds necessary or desirable for the protection of savings account holders and other creditors of the association.

(2) Any restriction on the withdrawals from an association may, with like approval, be at any time and from time to time extended, renewed, or modified.

(3) Any restriction shall be binding upon any association from the time the order of the board imposing the restriction is served on the affected association.

(4) The action of the board shall be a complete defense to any action or suit brought against any association on account or by reason of the observance or compliance with the restriction on withdrawals.

(5) The board may make and promulgate any rules and regulations which shall be required for the conduct of the business of an association for which withdrawals have been restricted pursuant to this subsection, with a view to the protection of the rights of the savings account holders, creditors, and members of the association, both with respect to savings account holders, creditors, and members who were such at the date of the restriction on withdrawals and those becoming savings account holders, creditors, or members after the restrictions have been imposed.

(d) While an application for withdrawals remains in effect and unpaid, no loan shall be made by an association secured by the pledge of a savings account.

(e) An application for withdrawal may be cancelled, in whole or in part, at any time by the holder of a savings account.

History. Acts 1963, No. 227, § 35; A.S.A. 1947, § 67-1835. tion was repealed by Acts 1997, No. 258, and its powers and duties were given to

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section the Supervisor of Savings and Loan Associations.

23-37-506. Conflicting claims to accounts.

In the event an association is given notice that conflicting claims of whatever kind and nature exist to the ownership or right to withdraw a savings account, the association may, at its option, without liability, withhold paying any withdrawals from the account until it receives a written withdrawal request executed by all the claimants to the savings account.

History. Acts 1963, No. 227, § 39; A.S.A. 1947, § 67-1839.

23-37-507. Damages for refusal to pay withdrawal request.

In the event an association wrongfully and without legal right refuses to pay a withdrawal request for a savings account, the owner of the savings account shall be entitled to recover damages from the association equal to interest at the legal rate prescribed by the laws of this state from the date the withdrawal request was refused. The owner shall not be entitled to recover from the association any special damages of whatever kind or nature.

History. Acts 1963, No. 227, § 46; A.S.A. 1947, § 67-1846.

23-37-508. Power of attorney.

An association or a federal association may recognize, or continue to recognize, the authority of an attorney in fact authorized in writing to manage or to make withdrawals, either in whole or in part, from a savings account until it receives written notice of the revocation of the authority of the attorney in fact or until it receives written notice of the death or adjudication of incompetency of the owner of the savings account.

History. Acts 1963, No. 227, § 41; A.S.A. 1947, § 67-1841.

23-37-509. Lien on account of borrower — Pledge of third party's account as security on loan.

(a) Every association operating under this chapter or any federal association shall have a lien, without further agreement or pledge, upon all savings accounts owned by any borrower, or savings accounts subject

to withdrawal by any borrower, to secure the payment of any indebtedness of the borrower to the association. Upon default on any loan, the association may, without notice to or consent of the borrower, cancel on its books all or any part of those savings accounts and apply the withdrawal value of the accounts in payment of any indebtedness of the borrower to the association.

(b) An association may, by written instrument, waive its lien, in whole or in part, on any savings accounts.

(c) An association may take the pledge of savings accounts of the association owned by a person other than the borrower as security or additional security for any loan made or purchased by the association.

History. Acts 1963, No. 227, § 36;
A.S.A. 1947, § 67-1836.

23-37-510. Validity of release or acquittance by officers of corporation or association.

A release or acquittance signed by either the president or the secretary of any corporation or any unincorporated association, whether foreign, domestic, charitable, public, or private, or signed by any person purporting to be the president or secretary of the corporation, who opens a savings account in the name of the corporation, shall constitute a valid and sufficient release of any association to the extent of any payment or delivery of rights or property made by the association to a corporation or unincorporated association upon the written direction of the president or secretary unless there has been filed with the association a copy of a resolution of the board of directors or other governing body of the corporation or unincorporated association designating other officers or agents of the corporation or unincorporated association who have the power to act for the corporation or unincorporated association with respect to the savings account.

History. Acts 1963, No. 227, § 45;
A.S.A. 1947, § 67-1845.

23-37-511. [Repealed.]

Publisher's Notes. This section, concerning accounts as security for bonds, was repealed by Acts 2009, No. 461, § 1. The section was derived from Acts 1963, No. 227, § 44; A.S.A. 1947, § 67-1844.

23-37-512. Legal investments in accounts.

(a) Administrators, executors, guardians, trustees, and other fiduciaries, business corporations, insurance companies and charitable or educational corporations or associations, banks, credit unions, and all other financial institutions, and any person acting as custodian under the Uniform Securities Ownership by Minors Act, § 9-26-301 et seq., are specifically authorized and empowered to invest funds held by them in savings accounts of any association or of any federal association.

(b) Trustees of any pension, profit, profit-sharing, or retirement trust for employees of any public or private corporation and any person having the care, custody, or control of any funds held for a pension or retirement plan, system, or trust for the employees of this state, or any political subdivision of this state, are specifically authorized and empowered to invest funds held by them in savings accounts of any association or of any federal association to the extent that the savings account does not exceed an amount equal to the sum of all reserve accounts except specific or valuation reserves, undivided profits, surplus, and capital stock, but not including the proceeds of capital notes, debentures, or similar obligations.

(c) The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in this section.

History. Acts 1963, No. 227, § 43; 1979, No. 361, § 8; A.S.A. 1947, § 67-1843.

Publisher's Notes. Acts 1977, No. 793, § 11, provided, in part, that after July 1, 1977 the authority of public retirement systems to invest in savings accounts,

pursuant to this section, should be construed to authorize the making of such investments only in accordance with procedures established by § 24-3-101 et seq., with respect to the four systems governed by those sections.

SUBCHAPTER 6 — FOREIGN ASSOCIATIONS

SECTION.

23-37-601. Operation in city on state line.
23-37-602. Agents, brokers, etc., generally.

SECTION.

23-37-603. Broker's license.

Effective Dates. Acts 1963, No. 227, § 65; Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and

that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 122 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 149 et seq.

23-37-601. Operation in city on state line.

A savings and loan association doing business in a state adjoining this state, in a city or incorporated town which borders on a city or incorporated town in this state and which is divided by a state line other than a navigable stream, may conduct its business in this state if it satisfies all the conditions for the conduct of its business in the adjoining state involved, without further qualification under this chapter. However, in the conduct of its business in this state, it shall be subject to the provisions of this chapter.

History. Acts 1963, No. 227, § 59;
A.S.A. 1947, § 67-1859.

23-37-602. Agents, brokers, etc., generally.

Unless acting as an agent for and on behalf of an association, no person, firm, or corporation shall, in this state, unless then licensed therefor pursuant to this chapter:

- (1) Act or hold himself or herself out as an agent, broker, or solicitor for others of savings accounts for foreign savings and loan associations;
- (2) Advertise in this state for the placing of savings accounts in foreign savings and loan associations; or
- (3) Collect, receive, or transmit any funds or take applications for the opening of savings accounts in any foreign savings and loan association.

History. Acts 1963, No. 227, § 13;
A.S.A. 1947, § 67-1813.

23-37-603. Broker's license.

(a) Application for a broker's license shall be made to the Supervisor of Savings and Loan Associations by the applicant and signed and sworn to by the applicant. The form of the application shall be prescribed by the supervisor and shall require full answers to any questions which may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience, and other facts required by the supervisor to determine whether the applicant meets the qualifications for the license applied for.

(b) All applications shall be accompanied by the applicable license fee.

(c) As a prerequisite to issuing a broker's license, the applicant shall file with the supervisor a bond, in the form prescribed by the supervisor. This bond shall be in the principal amount of twenty thousand dollars (\$20,000) with a corporate surety, conditioned on the faithful performance of the applicant's duties as a broker and the payment of all claims arising out of the performance by the applicant of his or her duties as a broker. The bond shall remain in full force and effect so long as the broker's license is outstanding.

(d) The supervisor shall promptly issue licenses applied for to persons qualified therefor in accordance with this section. The license

shall state the name and address of the licensee, the date of issue, and shall provide for a termination on January 31 of each year.

(e) For the protection of the people of this state, the supervisor shall not issue, continue, or permit to exist any broker's license except in compliance with this chapter, and as to any person not possessing the following qualifications:

- (1) The person must be of legal age;
- (2) The person must be of good character;
- (3) The person must have filed with the supervisor a bond pursuant to the terms of this section; and
- (4) The person must have filed with the supervisor copies of all advertisements which the broker proposes to use in this state.

History. Acts 1963, No. 227, §§ 14, 15;
A.S.A. 1947, §§ 67-1814, 67-1815.

SUBCHAPTER 7 — CONVERSION, MERGER, ETC

SECTION.

- 23-37-701. Conversion of state association into federal association.
- 23-37-702. Conversion of federal association into state association.
- 23-37-703. Conversion of mutual association into stock association.
- 23-37-704. Contemporaneous conversion from federal mutual to state stock association.

SECTION.

- 23-37-705. Reorganization, merger, consolidation, or sale of assets.
- 23-37-706. Federal Savings and Loan Insurance Corporation [abolished] as receiver.

Effective Dates. Acts 1939, No. 343, § 7: approved Mar. 16, 1939. Emergency clause provided: "It is hereby found and declared to be a fact that there is urgent need for legislation permitting the free investment by married women, minors, and fiduciaries in the shares, share accounts, or accounts of building and loan associations and providing for the appointment of the Federal Savings and Loan Insurance Corporation as a receiver, and permitting financial institutions of this state to invest their funds in the obligations and securities issued pursuant to the Federal Home Loan Bank Act and Title IV of the National Housing Act, and that there is an urgent need for additional funds to provide home loans for the people of this state, and for enlarging operations and financing the same and in marketing securities of public institutions engaged in such enterprises and that this act will have a beneficial effect in the premises

and that the foregoing needs are so urgent as to justify this emergency clause, and that it is consequently necessary for the preservation of the public peace, health, and safety that this Act shall become effective without delay. Therefore, an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage."

Acts 1963, No. 227, § 65: Mar. 13, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing statutes regulating savings and loan associations are incomplete, that full and complete regulation of savings and loan associations is necessary to protect investors and existing associations and that the immediate passage of this act is necessary to correct such situation. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval.”

Acts 1973, No. 292, § 8: Mar. 12, 1973. Emergency clause provided: “It is hereby found and determined by the General Assembly that existing laws governing the Arkansas Savings and Loan Association Board do not sufficiently define the authority of such Board, that such condition has greatly handicapped the Board in the proper administration of its duties and

that existing fees paid by savings and loan associations to the Supervisor of savings and loan associations are inadequate and insufficient to defray the costs of the services performed by the Supervisor; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 13 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 144 et seq.

23-37-701. Conversion of state association into federal association.

(a) Any association subject to this chapter may convert itself into a federal savings and loan association in accordance with the provisions of Section 5 of the Home Owners' Loan Act of 1933, upon a majority vote of the members or stockholders at an annual meeting or any special meeting called to consider that action.

(b) A copy of the minutes of the proceedings of the meeting of the members or stockholders, verified by the affidavit of the secretary, shall be filed in the office of the Supervisor of Savings and Loan Associations within ten (10) days after the date of the meeting. A sworn copy of the proceedings of the meeting, when so filed, shall be presumptive evidence of the holding and action of the meeting.

(c) Within three (3) months after the date of the meeting, the association shall take such action, in the manner prescribed and authorized by the laws of the United States, as shall make it a federal savings and loan association.

(d)(1) There shall be filed with the supervisor a copy of the charter issued to the federal savings and loan association by the Federal Home Loan Bank Board [abolished] or a certificate showing the organization of the association as a federal savings and loan association, certified by the secretary or assistant secretary of the Federal Home Loan Bank Board [abolished].

(2) A copy of the charter, or of the certificate, shall be filed by the association with the Secretary of State and with the county clerk of the county in which the home office of the association is located.

(e) Upon the grant to any association of a charter by the Federal Home Loan Bank Board [abolished], the association receiving the charter shall cease to be an association incorporated under this chapter and shall no longer be subject to the supervision and control of the supervisor and the Savings and Loan Association Board [abolished].

(f) Upon the conversion of any association into a federal savings and loan association, the corporate existence of the association shall not terminate, but the federal association shall be deemed to be a continuation of the entity of the association so converted, and all property of the converted association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by operation of law, and without any conveyance or transfer, and without any further act or deed, remain and be vested in and continue and be the property of the federal association into which the state association has converted itself. The federal association shall have, hold, and enjoy the same, in its own right, as fully and to the same extent as the same was possessed, held, and enjoyed by the converting association. The federal association, as of the time of the taking effect of the conversion, shall continue to have and succeed to all the rights, obligations, and relations of the converting association.

(g) All pending actions and other judicial proceedings to which the converting state association is a party shall not be deemed to have abated or to have been discontinued by reason of the conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion into the federal association had not been made. The federal association resulting from the conversion may continue the action in its corporate name as a federal association, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting state association theretofore involved in the judicial proceedings.

History. Acts 1963, No. 227, § 50; A.S.A. 1947, § 67-1850.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Home Loan Bank Board referred to in this section was abolished

by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Federal Housing Finance Agency.

U.S. Code. Section 5 of the Home Owners' Loan Act of 1933, referred to in this section, is codified as 12 U.S.C. § 1464.

23-37-702. Conversion of federal association into state association.

(a) Upon the approval of the Federal Home Loan Bank Board [abolished], or other applicable federal authority, any federal association may convert itself into an association under this chapter upon a majority vote of the members of the federal association cast at an annual meeting or any special meeting called to consider that action.

(b) Copies of the minutes of the proceedings of the meeting of members, verified by affidavit of the secretary, shall be filed in the office

of the Supervisor of Savings and Loan Associations. The verified copies of the proceedings of the meeting when so filed shall be presumptive evidence of the holding and action of the meeting.

(c)(1) At the meeting at which conversion is voted upon, the members shall approve bylaws and adopt articles of incorporation and elect the directors who shall be the directors of the state-chartered association after conversion takes effect, provided that the terms and conditions of a conversion may provide for the directors of the federal association to serve as directors of the converted state-chartered association.

(2) Copies of the bylaws and articles of incorporation adopted at the meeting, verified by affidavit of the secretary, shall be filed with the office of the supervisor.

(d)(1) If the bylaws and articles of incorporation are in conformity with the provisions of this chapter, and if a consent or acquiescence in the conversion by the Federal Home Loan Bank Board [abolished] or other applicable authority is filed with the supervisor, he or she shall endorse his or her approval on the articles of incorporation together with the following statement:

“This association is incorporated by conversion from a federal savings and loan association.”

(2) Upon the supervisor’s endorsement of approval, the former federal association shall be an association incorporated under the provisions of this chapter as a direct successor to the federal association.

(e) All the provisions regarding property and other rights contained in § 23-37-701 shall apply, in reverse order, to the conversion of a federal association into an association incorporated under this chapter so that the state-chartered association shall be a continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

History. Acts 1963, No. 227, § 51; 1973, No. 292, § 4; A.S.A. 1947, § 67-1851.

A.C.R.C. Notes. The Federal Home Loan Bank Board referred to in this section was abolished by the Financial Insti-

tutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Federal Housing Finance Agency.

23-37-703. Conversion of mutual association into stock association.

(a) With the approval of the Savings and Loan Association Board [abolished], any mutual association may convert into a stock association under this chapter upon a majority vote of the members of the mutual association at an annual or any special meeting called to consider that action.

(b) Prior to the meeting of the members to consider conversion from a mutual association to a stock association, the board of directors of the mutual association shall file with the Supervisor of Savings and Loan Associations a petition for authority to convert, which shall set forth:

(1) The proposed bylaws and articles of incorporation of the stock association;

(2) The details of the plan for conversion;

(3) The form of the notice that will be given to members of the mutual association of the meeting to consider conversion and the time and manner in which the notice will be given;

(4) The preemptive rights to subscribe to permanent capital stock in the stock association that will be granted to members;

(5) The manner in which permanent capital stock in the stock association will be sold and distributed;

(6) The manner of computing the interest of each member in the general and special reserves of the mutual association; and

(7) Any other information applicable to the conversion which the supervisor may by rule or regulation prescribe.

(c) Upon the filing of a petition for authority to convert from a mutual association to a stock association, the board shall hold a hearing on the petition and shall issue its certificate of preliminary approval, if the board finds:

(1) The plan for conversion proposed in the petition is fair and equitable to the members of the mutual association;

(2) The notice to the members of the meeting to consider the plan of conversion fairly sets out the rights and obligations of the members under the plan;

(3) Under the plan for conversion, each member of the association is given the right to subscribe on a pro rata basis to his or her interest in the mutual association to stock in the resultant stock association, provided, fractional shares shall not be required to be issued;

(4) The plan of conversion makes adequate provision for the payment to each member of his or her pro rata interest in any excess special or general reserves of the mutual association;

(5) The conversion to a stock association will not impair the mutual association's financial condition or its ability to pay withdrawals of savings accounts or other creditors;

(6) The converted stock association would meet the requirements under this chapter for the granting of an original certificate of incorporation to a stock association under this chapter; and

(7) Not more than twenty-five percent (25%) of the outstanding permanent stock of the converted association, upon conversion, will be owned directly or beneficially by any one (1) individual.

(d)(1) Upon receipt of a certificate of preliminary approval, the board of directors of the mutual association shall call a meeting of the members to consider the plan of conversion.

(2) Notice of the meeting shall be given in the form and manner prescribed by the order of the board.

(3) A copy of the minutes of the proceedings of the meeting of the members, and copies of the articles of incorporation and bylaws adopted by the members, verified by the affidavit of the secretary of the association, shall be filed in the office of the supervisor and shall be presumptive evidence of the holding and actions of the meeting.

(e)(1) Upon the filing of the documents and the receipt of evidence satisfactory to the supervisor that the plan of conversion approved by the board has been implemented, the supervisor shall endorse his or her approval on the articles of incorporation of the proposed stock association, whereupon the stock association shall become and be deemed to be a stock association under this chapter.

(2) A copy of the articles of incorporation, bearing the endorsement of approval by the supervisor, shall be filed with the Secretary of State and with the county clerk of the county in which the home office of the association is located.

(f) Upon the conversion from a mutual association to a stock association, the corporate existence of the association shall not terminate, but the stock association shall be deemed to be a continuation of the entity of the former mutual association. All the provisions regarding property and other rights contained in § 23-37-701 shall apply to the conversion of a mutual association to a stock association so that the stock association shall be a continuation of the corporate entity of the former mutual association and continue to have all of its property and rights.

History. Acts 1963, No. 227, § 52; 1973, No. 292, § 5; A.S.A. 1947, § 67-1852.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-704. Contemporaneous conversion from federal mutual to state stock association.

(a) A federal association may file with the Savings and Loan Association Board [abolished] a joint petition for authority to convert from a federal association to a state-chartered association and contemporaneously to convert from a mutual association to a stock association.

(b) Pursuant to the provisions of § 23-37-703, the board may hold a hearing on the petition and issue its certificate of preliminary approval to a contemporaneous conversion from a federal association to a state-chartered stock association.

History. Acts 1963, No. 227, § 52; 1973, No. 292, § 5; A.S.A. 1947, § 67-1852.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-705. Reorganization, merger, consolidation, or sale of assets.

(a) Pursuant to a plan adopted by the board of directors and approved by the Savings and Loan Association Board [abolished] as being equitable to the members or stockholders of the association and as not impairing the usefulness and success of other properly conducted

associations in the vicinity, an association shall have power to reorganize, or to merge or consolidate with, or to sell all or a portion of its assets to another association or a federal association.

(b) The plan of reorganization, merger or consolidation, or sale shall be approved by a majority vote of the members or stockholders of the affected associations cast at an annual meeting or at any special meeting called to consider such an action.

(c) In all cases, the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this chapter.

History. Acts 1963, No. 227, § 53; A.S.A. 1947, § 67-1853.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this sec-

tion was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

CASE NOTES

Consent of Shareholders.

A merger without consent of shareholders holding majority of shares in each contracting association is void. *El Dorado*

Bldg. & Loan Ass'n v. Union Sav. Bldg. & Loan Ass'n, 189 Ark. 858, 75 S.W.2d 399 (1934) (decision under prior law).

23-37-706. Federal Savings and Loan Insurance Corporation [abolished] as receiver.

(a) The Federal Savings and Loan Insurance Corporation [abolished] is authorized and empowered to act, without bond, as receiver or liquidator of any building and loan or savings and loan association, hereinafter referred to as an "insured association", which has the insurance protection provided by Title IV of the National Housing Act and which shall have been taken over for liquidation pursuant to the provisions of the laws of this state.

(b)(1) The appropriate state authority having the right to appoint a receiver or liquidator of the insured association, in the event of the taking over of the insured association for liquidation, shall tender to the Federal Savings and Loan Insurance Corporation [abolished] the appointment as receiver or liquidator thereof, and, if the Federal Savings and Loan Insurance Corporation [abolished] accepts the appointment, the Federal Savings and Loan Insurance Corporation [abolished] shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator of a savings and loan association, its investors, depositors, and other creditors and shall be subject to all duties of a receiver or liquidator.

(2) In addition, the Federal Savings and Loan Insurance Corporation [abolished] shall have all the rights, privileges, and powers conferred upon it by federal statutes.

(3) The Federal Savings and Loan Insurance Corporation [abolished] may make loans on the security of, or may purchase at public or private sale, and bid at any receiver's sale, and liquidate or sell, any part of the assets of the association of which it is the receiver, and, in the event of

the purchase of the assets, it shall bid for and pay a fair and reasonable price.

(c) Whether or not the Federal Savings and Loan Insurance Corporation [abolished] shall serve as receiver or liquidator of an insured association, whenever it shall pay or make available for payment the liabilities of an insured association in liquidation which are insured by it, it shall be subrogated, upon the surrender and transfer to it of any share, share account, or account insured by it with respect to that share, share account, or account. However, the surrender and transfer of the share account or account shall not affect any right which the transferor thereof may have in any portion of the share, share account, or account which is uninsured or any right to participate in the distribution of the net proceeds remaining from the disposition of the assets of the insured association. The rights of the investors in, and creditors of, the insured association shall be determined in accordance with the applicable provisions of the laws of this state.

(d) Upon the acceptance by the Federal Savings and Loan Insurance Corporation [abolished] of appointment as a receiver or liquidator, possession of, and title to, all the assets, business, and property of the insured association of every kind and nature shall pass to, and be vested in, the Federal Savings and Loan Insurance Corporation [abolished] as receiver or liquidator.

History. Acts 1939, No. 343, § 3; A.S.A. 1947, § 67-857.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No.

101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

U.S. Code. Title IV of the National Housing Act, referred to in this section, was codified as 12 U.S.C. § 1724 et seq. [repealed].

CASE NOTES

Cited: Guaranty Sav. & Loan Ass’n v. Federal Home Loan Bank Bd., 794 F.2d 1339 (8th Cir. 1986).

SUBCHAPTER 8 — REGIONAL SAVINGS AND LOAN ACT OF 1987

SECTION.	SECTION.
23-37-801. Title.	23-37-808. Permissible nondisqualified acquisitions.
23-37-802. Definitions.	23-37-809. Prohibited acquisitions.
23-37-803. Penalties and remedies.	23-37-810. Acquirer of an Arkansas association or Arkansas savings and loan holding company subject to Arkansas laws.
23-37-804. Acts requiring prior approval of the board.	23-37-811. Registration of association — Reports — Regulations.
23-37-805. Acts requiring prior approval of federal authorities.	23-37-812. Determination of total deposits.
23-37-806. Savings and loan holding company acquisitions not requiring prior approval.	
23-37-807. Applications to the board for approval.	

A.C.R.C. Notes. References to “this chapter” in the text of subchapters 1-7 of this chapter may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1987, No. 45, § 13: July 1, 1987.

23-37-801. Title.

This subchapter shall be known and may be cited as the “Regional Savings and Loan Act of 1987”.

History. Acts 1987, No. 45, § 1.

23-37-802. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Acquire”, as applied to an association or a savings and loan holding company, means any of the following actions or transactions:

(A) The merger or consolidation of an association with another association or with a savings and loan holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of another association or savings and loan holding company if, after the acquisition, the acquiring association or savings and loan holding company will directly or indirectly own or control more than ten percent (10%) of any class of voting shares of the acquired association or savings and loan holding company;

(C) The direct or indirect acquisition of all or substantially all of the assets of another association or savings and loan holding company; or

(D) The taking of any other action that would result in the direct or indirect control of another association or savings and loan holding company;

(2) “Arkansas association” means an association organized under the laws of the State of Arkansas or under the laws of the United States and which:

(A) Has its principal place of business in Arkansas;

(B) If controlled by an organization, the organization is either an Arkansas association, southern region association, Arkansas savings and loan holding company, or a southern region savings and loan holding company; and

(C) Has more than eighty percent (80%) of its total deposits, other than deposits located in branch offices pursuant to § 23-37-811(a), in its branch offices located in one (1) or more of the southern region states;

(3) “Arkansas savings and loan holding company” means a savings and loan holding company which has:

(A) Its principal place of business in Arkansas;

(B) Total deposits of its southern region association subsidiaries and Arkansas association subsidiaries that exceed eighty percent (80%) of the total deposits of all association subsidiaries of the

savings and loan holding company other than those association subsidiaries held under § 23-37-811(a);

(4) "Association" means a mutual or capital stock savings and loan association, savings association, building and loan association, or savings bank chartered under the laws of any one of the states or by the Federal Home Loan Bank Board [abolished], pursuant to the Home Owner's Loan Act of 1933, and whose deposits are eligible to be insured by the Federal Savings and Loan Insurance Corporation [abolished];

(5) "Board" means the Savings and Loan Association Board [abolished];

(6) "Branch office" means any office at which an association accepts deposits. The term "branch office" does not include:

(A) Unmanned automatic teller machines, point-of-sale terminals, or similar unmanned electronic banking facilities at which deposits may be accepted;

(B) Offices located outside the United States; and

(C) Loan production offices, representative offices, service corporation offices, or other offices at which deposits are not accepted;

(7) "Company" means any company under the Savings and Loan Holding Company Amendments of 1967;

(8) "Control" means that which is set forth in the Savings and Loan Holding Company Amendments of 1967;

(9) "Deposits" means, with respect to an association, withdrawable or repurchaseable shares, investment certificates, deposits, or other savings accounts in an association held by individuals, partnerships, corporations, the United States Government, states and political subdivisions of the United States, and other entities, exclusive of deposits by foreign governments and foreign official institutions, and by other associations. Determination of deposits must be made by reference to regulatory reports of condition or similar reports filed by the association with applicable state or federal regulatory authorities;

(10) "Federal association" means an association chartered by the Federal Home Loan Bank Board [abolished] pursuant to § 5 of the Home Owner's Loan Act of 1933;

(11) "Principal place of business" of an association means the state in which the aggregate deposits of the association are the largest. For the purposes of this section, the principal place of business of a savings and loan holding company is the state where the aggregate deposits of the association subsidiaries of the holding company are the largest;

(12) "Savings and loan holding company" means that which is set forth in the Savings and Loan Holding Company Amendments of 1967;

(13) "Service corporation" means any corporation, the majority of the capital stock of which is owned by one (1) or more associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which an association may invest under the laws of one (1) of the states or under the laws of the United States;

(14) "Southern region association" means an association other than an Arkansas association organized under the laws of one (1) of the

southern region states or under the laws of the United States and which:

(A) Has its principal place of business only in a southern region state other than Arkansas;

(B) If controlled by an organization, the organization is either a southern region association or a southern region savings and loan holding company; and

(C) Has more than eighty percent (80%) of its total deposits other than deposits located in branch offices pursuant to § 23-37-811(a) in its branch offices located in one (1) or more of the southern region states;

(15) "Southern region savings and loan holding company" means a savings and loan holding company which has:

(A) Its principal place of business in a southern region state other than Arkansas;

(B) Total deposits of its southern region association subsidiaries and Arkansas association subsidiaries that exceed eighty percent (80%) of the total deposits of all association subsidiaries of the savings and loan holding company other than those association subsidiaries held under § 23-37-811(a);

(16) "Southern region states" means the states of Arkansas, Tennessee, Missouri, Mississippi, Texas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia and the District of Columbia;

(17) "State" means any one (1) of the states of the Union or the District of Columbia;

(18) "State association" means an association organized under the laws of one (1) of the states; and

(19) "Subsidiary" means that which is set forth in the Savings and Loan Holding Company Amendments of 1967.

History. Acts 1987, No. 45, § 2; 1987, No. 825, § 1.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board referred to in this section were abolished by the Financial In-

stitutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entities have been largely assumed by the Office of the Comptroller of the Currency and the Federal Housing Finance Agency.

U.S. Code. The Home Owner's Loan Act of 1933, referred to in this section, is codified as 12 U.S.C. § 1461 et seq. The Savings and Loan Holding Company Amendments of 1967 were codified as 12 U.S.C. § 1730a [repealed].

23-37-803. Penalties and remedies.

(a) In the event any association or savings and loan holding company consummates an acquisition that is prohibited by this subchapter, the Savings and Loan Association Board [abolished] shall require the association or savings and loan holding company to divest itself within two (2) years of its direct or indirect ownership or control of all

Arkansas associations or Arkansas savings and loan holding companies.

(b) The board shall have the power to enforce the prohibitions contained in these sections through the imposition of fines and penalties, the issuance of cease and desist orders, and such other remedies as are provided by law.

History. Acts 1987, No. 45, § 11.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258,

and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-804. Acts requiring prior approval of the board.

With the prior approval of the Savings and Loan Association Board [abolished] in accordance with § 23-37-807(a) and upon receipt of approval from all other applicable state and federal regulatory authorities having approval authority over the transaction:

(1) A company may become an Arkansas savings and loan holding company;

(2) An Arkansas savings and loan holding company may acquire:

(A) An Arkansas association or other Arkansas savings and loan holding company;

(B) A southern region association or a southern region savings and loan holding company; and

(C) An association or savings and loan holding company having association offices which are located outside of the southern region as authorized under § 23-37-811(a);

(3) A southern region savings and loan holding company may acquire a southern region savings and loan holding company having an Arkansas association subsidiary;

(4) An Arkansas state association may acquire a southern region association; and

(5) A southern region association may acquire an Arkansas state association.

History. Acts 1987, No. 45, § 3.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258,

and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-805. Acts requiring prior approval of federal authorities.

With the prior approval of the Federal Home Loan Bank Board [abolished] and other applicable federal authorities in accordance with their approval authority over the transaction and without the necessary approval of the board except for the requirements under § 23-37-810:

(1) An Arkansas federal association may acquire a southern region association; and

(2) A southern region association may acquire an Arkansas federal association.

History. Acts 1987, No. 45, § 4.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258, and its powers and duties were given to the Supervisor of Savings and Loan Associations.

The Federal Home Loan Bank Board referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Federal Housing Finance Agency.

23-37-806. Savings and loan holding company acquisitions not requiring prior approval.

(a) Without any prior approval of the Savings and Loan Association Board [abolished], a southern region savings and loan holding company having an Arkansas association subsidiary may acquire:

(1) A southern region savings and loan holding company that does not have an Arkansas association subsidiary;

(2) A southern region association that does not have any branch offices in Arkansas; or

(3) To the extent authorized in § 23-37-811(a), an association or savings and loan holding company having association offices which are located outside the southern region.

(b) The southern region savings and loan holding company shall notify the board at least thirty (30) days prior to the consummation of the proposed transaction. The notification requirements of this section are satisfied by furnishing the board with a copy of the completed application seeking approval for the proposed transaction which is filed with the federal savings and loan regulatory authority.

History. Acts 1987, No. 45, § 5.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258,

and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-807. Applications to the board for approval.

(a) Whenever an application is filed as required under § 23-37-806, or if approval of the Savings and Loan Association Board [abolished] pursuant to this section is required under § 23-37-810, the board shall approve the transaction if it is otherwise approved as required by applicable laws, and if, in addition:

(1) The laws of the state in which the southern region association or southern region savings and loan holding company, as applicable, filing the application has its principal place of business permit Arkansas associations and Arkansas savings and loan holding companies, as applicable, to acquire associations and savings and loan holding companies in that state;

(2) Under the laws of the state where it has its principal place of business, the southern region association or southern region savings

and loan holding company filing the application could be acquired by the Arkansas association or Arkansas savings and loan holding company, as applicable; and

(3) Each Arkansas association sought to be acquired directly or indirectly in the proposed transaction has been in existence and continuously operated as an association for a period of five (5) years or more prior to the date the application for approval of the transaction was filed with the board. This requirement does not prohibit a southern region association or southern region savings and loan holding company from acquiring all or substantially all of the ownership of an Arkansas association organized solely for the purpose of facilitating the acquisition of an Arkansas association in existence and continuously operated as an association for the requisite five-year period.

(b) The board shall rule on any application requiring approval under this section not later than ninety (90) days following the date of acceptance of a completed application seeking approval of the proposed transaction. If the board fails to rule on the application within the requisite ninety-day period, the proposed transaction is approved.

(c) The applicant is entitled to notice and a hearing contesting the denial by the board of any application.

History. Acts 1987, No. 45, § 6.

and its powers and duties were given to

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258,

the Supervisor of Savings and Loan Associations.

23-37-808. Permissible nondisqualified acquisitions.

A southern region association, a southern region savings and loan holding company, an Arkansas association, or an Arkansas savings and loan holding company may acquire or control, and does not cease to be a southern region association, a southern region savings and loan holding company, an Arkansas association, or Arkansas savings and loan holding company, respectively, by virtue of its acquisition or control of an association or savings and loan holding company other than as expressly permissible under §§ 23-37-806 and 23-37-807 if:

(1) Immediately following the consummation of the acquisition, the Arkansas association, Arkansas savings and loan holding company, southern region association, or southern region savings and loan holding company qualifies as such; and

(2) The association or savings and loan holding company making the application complies with the approval and notification requirements in §§ 23-37-806 and 23-37-807.

History. Acts 1987, No. 45, § 7.

23-37-809. Prohibited acquisitions.

(a) Except as specifically permitted under § 23-37-812, no Arkansas association, Arkansas savings and loan holding company, southern region association, or southern region savings and loan holding company having an Arkansas association subsidiary may acquire an association or savings and loan holding company which is not either an Arkansas savings and loan holding company or a southern region savings and loan holding company or an association which is not either an Arkansas association or a southern region association.

(b) Except as expressly permitted by federal law, no association which is not either an Arkansas association or a southern region association and no savings and loan holding company which is not either an Arkansas savings and loan holding company or a southern region savings and loan holding company may acquire an Arkansas association, an Arkansas savings and loan holding company, or a southern region savings and loan holding company controlling an Arkansas association.

History. Acts 1987, No. 45, § 8.

23-37-810. Acquirer of an Arkansas association or Arkansas savings and loan holding company subject to Arkansas laws.

Any southern region association or southern region savings and loan holding company which directly or indirectly acquires an Arkansas association or an Arkansas savings and loan holding company is subject to all the laws of this state relating to the acquisition, ownership, expansion, and operation of Arkansas associations and Arkansas savings and loan holding companies.

History. Acts 1987, No. 45, § 9.

23-37-811. Registration of association — Reports — Regulations.

(a) Each Arkansas association, Arkansas savings and loan holding company, southern region association controlling an Arkansas association, and southern region savings and loan holding company controlling an Arkansas association which engages in a transaction which requires approval of the Savings and Loan Association Board [abolished] pursuant to § 23-37-807 shall, within thirty (30) days after approval of the transaction, initially register and file annually with the board forms prescribed by the board. These forms shall include such information with respect to the financial condition and operations, management, and relations between applicable associations and savings and loan holding companies, and related matters, as the board may consider necessary or appropriate to carry out the purposes of these sections.

(b) To the extent authorized by law, the board may make examinations of each association or savings and loan holding company required

to be registered pursuant to subsection (a) of this section and any service corporation of the association, the cost of which must be assessed against and paid by the association.

(c) The board may enter into cooperative and reciprocal agreements with the association and savings and loan holding company regulatory authorities of any state or of the United States for the periodic examination of associations and savings and loan holding companies that are required to be registered under the provisions of subsection (a) of this section and may accept reports of examinations and other records from the authorities in lieu of conducting its own examinations.

(d) The board may establish regulations to carry out the purposes of this subchapter.

History. Acts 1987, No. 45, § 10.

A.C.R.C. Notes. The Savings and Loan Association Board referred to in this section was repealed by Acts 1997, No. 258,

and its powers and duties were given to the Supervisor of Savings and Loan Associations.

23-37-812. Determination of total deposits.

For purposes of this subchapter, the total deposits of savings and loan associations within the region shall be determined by reference to the records of the Federal Home Loan Bank Board [abolished], Washington D.C.

History. Acts 1987, No. 45, § 13.

A.C.R.C. Notes. The Federal Home Loan Bank Board referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforce-

ment Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Federal Housing Finance Agency.

CHAPTER 38
BUILDING AND LOAN ASSOCIATIONS —
MISCELLANEOUS PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ORGANIZATION AND OPERATION.
3. LIQUIDATION.
4. PROHIBITED PRACTICES.

Publisher's Notes. Chapter 37 of this title contains provisions governing savings and loan associations and building and loan associations. Pursuant to § 23-37-102, the provisions of Acts 1963, No.

227, which constitute the majority of chapter 37, would control over any provisions of this chapter which are inconsistent therewith.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-38-101. Definitions.

23-38-102. Annual reports.

Effective Dates. Acts 1931, No. 236, § 19: effective on passage.

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 1 et seq. **C.J.S.** 12 C.J.S., Bldg. & L. Asso., § 1 et seq.

23-38-101. Definitions.

As used in this act, unless the context otherwise requires:

(1) "Building and loan association" means any association or corporation which is chartered under any building and loan law, which is principally in the business of assisting its members to buy, improve, or build homes or to remove encumbrances therefrom, and which accumulates the funds loaned through the issuance or sale of its own shares or certificates;

(2) “Domestic association” means any association chartered under the laws of this state;

(3) “Foreign association” means any association chartered under the laws of any other state or territory of the United States;

(4)(A) “Guaranty, or permanent stock building and loan association” means a financial institution incorporated by the state which has for its purposes those outlined in subdivision (1) of this section and which issues a class of stock known as “guaranty capital stock”, “permanent capital stock”, or “reserve capital stock”, as provided in Acts 1929, No. 128, § 18 [repealed].

(B) Par funds derived from the sale of the shares shall be set apart and be a fixed and permanent guaranty or reserve to holders of all other shares or certificates and to all other customers of the association that the association will fulfill its agreement as per terms of contract with them.

(C) “Guaranty”, “permanent”, or “reserve capital stock” cannot be withdrawn until final liquidation of the association, and no loans shall ever be made by the association upon the pledge of the stock as security; and

(5) “Mutual building and loan association” means a mutual, cooperative financial institution, incorporated by the state and composed of members who associate themselves together for mutual benefit and the purposes outlined in subdivision (1) of this section.

History. Acts 1929, No. 128, § 4a, as added by Acts 1931, No. 236, § 1; 1929, No. 128, §§ 5-7; 1931, No. 236, §§ 2, 3; Pope's Dig., §§ 979-982; A.S.A. 1947, §§ 67-801 — 67-804.

Meaning of "this act". Acts 1929, No.

128, codified as §§ 23-38-101, 23-38-102, 23-38-201 — 23-38-207, 23-38-209 — 23-38-214, 23-38-216, 23-38-217, 23-38-220, 23-38-302 — 23-38-304, 23-38-307, 23-38-401 — 23-38-404.

CASE NOTES

Withdrawal of Assets.

A contract for merger of two building and loan associations providing for reservation, from assets turned over of real estate to be divided among holders of

guaranty stock upon surrender of their stock was void as in violation of subdivision (3) of this section. *El Dorado Bldg. & Loan Ass'n v. Union Sav. Bldg. & Loan Ass'n*, 189 Ark. 858, 75 S.W.2d 399 (1934).

23-38-102. Annual reports.

(a)(1) Within sixty (60) days after December 31 each year, every building and loan association operating under the provisions of this act shall file with the Securities Commissioner a statement of its financial condition at the close of its business on December 31 setting forth such details of its financial condition upon such blanks as may be prescribed by the commissioner.

(2)(A) Unless an extension of time is granted in writing by the commissioner, failure to file the statement within the time mentioned shall be a violation punishable by a fine of one hundred dollars (\$100) for each day the statement is delinquent.

(B) The fine shall be assessed against the secretary of the association by any court of competent jurisdiction upon complaint of the commissioner.

(b)(1) The commissioner shall annually file with the Governor a report of the name, officers, directors, domicile, and financial statement of each building and loan association.

(2) This report shall be published in book form.

History. Acts 1929, No. 128, §§ 28, 29; 1931, No. 236, § 13; Pope's Dig., §§ 1005, 1006; A.S.A. 1947, §§ 67-842, 67-843; Acts 2005, No. 1994, § 150.

Meaning of "this act". See note to § 23-38-101.

SUBCHAPTER 2 — ORGANIZATION AND OPERATION

SECTION.

- 23-38-201. Shares, stock, or certificates generally.
- 23-38-202. Calling in shares.
- 23-38-203. Guaranty associations — Stock, dividends, etc.
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Effective Dates. Acts 1931, No. 236, § 19: effective on passage.

Acts 1932 (2nd Ex. Sess.), No. 11, § 2: approved Apr. 8, 1932. Emergency clause provided: "The General Assembly finds and declares that building and loan associations cannot, under present unfavorable economic conditions, acquire through their ordinary sources of revenue sufficient moneys to carry out their corporate purposes, that is, to make loans to their members to assist such members in saving their homes; to render necessary financial assistance to those who desire to improve, purchase, and maintain homes; to earn money for association members, and, in many instances, to retire maturing stock; that to carry out said corporate purposes, it is necessary that said association be authorized to borrow money from corporations created by an act or acts of Congress of the United States and to subscribe for stock to said corporation or corporations, and that the immediate passage of this act conferring such power will improve generally the prevailing financial conditions of this State; and that, because of such facts, an emergency exists which makes it necessary for the preservation of the public peace, health and safety that this act become effective upon its passage, and it is hereby declared that this act shall take effect and be in force from and after its passage."

Acts 1933, No. 54, § 7: Feb. 22, 1933. Emergency clause provided: "Because of the distressed financial condition of the people of Arkansas and the lack of available funds, and because of the fact that the laws of this State do not provide adequately for the proper control and regulation of building and loan associations, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1935, No. 40, § 3: approved Feb. 16, 1935. Emergency clause provided: "Because of the present economic depression, and the fact that an attorney's fee in such cases is in the nature of a penalty, and contrary to the general policy of this State, and an exaction not generally accorded to all the citizens of this State, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety and the general welfare of the people of this State, same shall take effect and be in full force from and after its passage."

Acts 1935, No. 128, § 7: approved Mar. 19, 1935. Emergency clause provided: "It is hereby found and declared to be a fact that there is urgent need of funds on the part of building and loan associations chartered by the State of Arkansas, and that the Secretary of the Treasury of the United States, on behalf of the United States Government, is authorized to purchase, and is purchasing and will purchase, shares in Federal Savings and Loan Associations, for the purpose of supplying funds when needed, and that there is urgent need for an increased market for loans and securities upon real estate in this State and for additional relief from the present unsatisfactory mortgage situation and for enlarged opportunities for refinancing distressed mortgages and in marketing new mortgages and in encouraging new construction and that this act will have a beneficial effect in the premises and that the foregoing needs are so urgent as to justify this emergency clause and that it is consequently necessary for the preservation of the public peace, health and safety that this act shall become effective without delay. Therefore, an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage."

Acts 1939, No. 169, § 3: Mar. 2, 1939. Emergency clause provided: "Due to the fact that many of the building and loan associations in the State of Arkansas are small and under the present limitation on operating expenses cannot realize enough funds to properly operate said Associations satisfactorily, and the continued operation of said small building and loan associations is of great need to the people of the State of Arkansas, and this act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1939, No. 343, § 7: approved Mar. 16, 1939. Emergency clause provided: "It is hereby found and declared to be a fact that there is urgent need or legislation permitting the free investment by married women, minors, and fiduciaries in the shares, share accounts, or accounts of building and loan associations and providing for the appointment of the Federal Savings and Loan Insurance Corporation as a receiver, and permitting financial institutions of this state to invest their funds in the obligations and securities issued pursuant to the Federal Home Loan Bank Act and Title IV of the National Housing Act, and that there is an

urgent need for additional funds to provide home loans for the people of this state, and for enlarging operations and financing the same and in marketing securities of public institutions engaged in such enterprises and that this act will have a beneficial effect in the premises and that the foregoing needs are so urgent as to justify this emergency clause, and that it is consequently necessary for the preservation of the public peace, health, and safety that this Act shall become effective without delay. Therefore, an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage."

Acts 1955, No. 149, § 5: Mar. 7, 1955. Emergency clause provided: "Due to the fact that there has been considerable and great change in home needs and home financing since the enactment of Act No. 128 of the Acts of the General Assembly for the year 1929, and there have been no amendments to bring current the laws of the State of Arkansas relative to domestic building and loan associations, there is great necessity to modernize the laws pertaining to such associations, and, this act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 Am. Jur. 2d, Bldg. & L. Asso., § 6 et seq.

C.J.S. 12 C.J.S., Bldg. & L. Asso., § 9 et seq.

23-38-201. Shares, stock, or certificates generally.

(a) The bylaws of each association shall describe the several kinds or classes of shares, stock, or certificates which it may issue.

(b) The board of directors of the associations shall have power and authority to limit or suspend the issuing of any or all classes of shares, stock, or certificates, to fix a maximum limit for the excess payments, above the regular dues, which may be paid in any one (1) month on installment shares. The board may also remove the limit or suspension at any time in its discretion.

History. Acts 1929, No. 128, § 13; Pope's Dig., § 989; A.S.A. 1947, § 67-816.

23-38-202. Calling in shares.

(a) Any building and loan association, in its bylaws, may reserve the right and power to require, at any time, any holders of any or all classes of shares, stock, or certificates issued by it, except guaranty permanent shares, to surrender for cancellation and payment any or all of the shares, stock, or certificates held by them, upon notice to do so within a reasonable time stated in the notice.

(b) Upon surrender, the association shall pay to the owner of the shares, stock, or certificates the full book value thereof, together with the contract or earned interest or dividend thereon, up to the date specified in the notice to surrender.

(c) The shares, stock, or certificates called for surrender, cancellation, and payment, and not brought in for that purpose, shall cease to draw interest or dividend at the date named for the surrender.

(d) All shares withdrawn, paid off, or called in and cancelled shall revert to the association and may be reissued as new shares.

History. Acts 1929, No. 128, § 15;
Pope's Dig., § 991; A.S.A. 1947, § 67-822.

23-38-203. Guaranty associations — Stock, dividends, etc.

(a) Any association with guaranty permanent capital may issue to its members, or to nonmembers, other classes of investment certificates, or savings certificates or pass books, and shall specify on all of the other classes of certificates or pass books the fixed, definite rate of interest thereon.

(b) The associations may contract to mature their loans on a definite contract basis without reference to the maturity of shares.

(c) Associations having guaranty permanent capital, after setting aside from the earnings a sum sufficient to pay, credit, or reserve to all other classes of investment certificates, savings certificates, and pass-books the accrued interest or dividend thereon, and those further sums which this act may provide for the contingent reserve fund, and to pay all other past due liabilities, may then distribute the balance of any distributable surplus profits as a dividend to the guaranty permanent shares.

(d)(1) The amount of guaranty permanent stock authorized to be issued by every guaranty plan association shall be not less than one hundred fifty thousand dollars (\$150,000), of which not less than twenty-five thousand dollars (\$25,000) shall be paid in cash before the association begins operation. The amount of the paid-in guaranty permanent shares shall at all times be not less than five percent (5%) of the total liabilities of the association until the entire authorized guaranty permanent capital has been paid in, and the full amount of one hundred fifty thousand dollars (\$150,000) permanent or guaranty capital shall thereafter be maintained.

(2) However, associations domiciled in towns of not more than one thousand five hundred (1,500) population and confining their opera-

tions to the town and the vicinity within five (5) miles thereof may begin operation with a guaranty capital subscribed and paid in cash of not less than ten thousand dollars (\$10,000).

History. Acts 1929, No. 128, § 9; Pope's Dig., § 984; A.S.A. 1947, § 67-819.

Meaning of "this act". Acts 1929, No. 128, codified as §§ 23-38-101, 23-38-102,

23-38-201 — 23-38-207, 23-38-209 — 23-38-214, 23-38-216, 23-38-217, 23-38-220, 23-38-302 — 23-38-304, 23-38-307, 23-38-401 — 23-38-404.

23-38-204. Mutual or guaranty permanent stock associations — Dayton or optional payment plan.

(a) The Dayton or optional payment plan of maturing shares or certificates may be employed by either mutual or guaranty permanent stock associations.

(b) Members or certificate holders whose shares are on the optional payment plan may make payments thereon in any amount at any time, subject to those limitations which the board of directors may impose under the bylaws of the association.

(c) The stock may be subject to withdrawal under the bylaws of the association, but the entire number of shares represented by the certificate must be withdrawn at one (1) time. It shall not be permissible to make partial withdrawals under any of the certificates.

History. Acts 1929, No. 128, § 8; Pope's Dig., § 983; A.S.A. 1947, § 67-818.

23-38-205. Directors — Stock ownership.

(a) The bylaws of each building and loan association may prescribe other qualifications for directors, but no person shall be eligible to election as director unless he or she is a bona fide owner of stock or shares in the association to the amount of:

(1) Two hundred fifty dollars (\$250) fully paid and free from all liens if the assets of the association do not exceed one hundred thousand dollars (\$100,000); and

(2) Five hundred dollars (\$500) if the assets of the association do exceed one hundred thousand dollars (\$100,000).

(b) A director shall not have the right to sell or dispose of his or her stock or to resign or vacate his or her office as director during the term for which he or she is elected without the consent and approval of the Securities Commissioner.

History. Acts 1929, No. 128, § 19; 1931, No. 236, § 10; Pope's Dig., § 995; A.S.A. 1947, § 67-811.

23-38-206. Voting rights, etc., of shareholders and directors.

The bylaws of each association shall prescribe the voting rights and powers of the owners of the several classes of shares of stock and

certificates and the qualifications of the voting shareholders and of the members of the board of directors.

History. Acts 1929, No. 128, § 14; Pope's Dig., § 990; A.S.A. 1947, § 67-817.

23-38-207. Members or employees may take acknowledgments.

No notary public or other public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a building and loan association is interested by reason of his or her membership or stockholding in, or employment by, the building and loan association interested in the instrument. Any such acknowledgments taken prior to June 11, 1931, are validated.

History. Acts 1929, No. 128, § 27a, as added by Acts 1931, No. 236, § 12; Pope's Dig., § 1004; A.S.A. 1947, § 67-814.

23-38-208. Excessive dividends — Suspension of payment.

(a) If, after examination, the Securities Commissioner shall find that any building and loan association of this state is paying, crediting, or reserving dividends, or is about to pay, credit, or reserve dividends, or is distributing or about to distribute profits, on its stock or certificates in excess of the dividends or profits earned; or that the condition of the assets of the association does not justify the payment, credit, or reservation of dividends or the distribution of profits upon its stock or certificates; or that dividends or profits are being or are about to be paid, credited, reserved, or distributed so as to result in inequities to the stockholders or certificate holder, or any class or portion thereof; or that the safety of the investments in the association are, or are about to be, jeopardized by the payment, credit, reservation, or distribution of dividends or profits, then the commissioner shall order the association, in writing, to cease to pay, credit, or reserve dividends, or distribute profits, on any class of its shares or certificates except as and to the extent as may be specified in the order, notice of which order shall be given to the officers of the association.

(b) From and after the issuance of the order, it shall be unlawful for the association to pay, credit, or reserve any dividends, or distribute any profits, on any of its shares or certificates contrary to the order. Willful violation of the terms of the order shall have the effect of rendering the officers and directors of the association participating in the violation jointly and severally liable for the amount of the dividends or distributions unlawfully paid, credited, reserved, or distributed.

(c) The order shall remain in full force and effect until the commissioner shall have determined either:

(1) That the assets and earnings of the association are in a condition and of a value and amount which permits the association to resume

dividends or distributions to such extent as the commissioner may authorize; or

(2) That the association should go into voluntary liquidation or receivership.

History. Acts 1933, No. 54, § 2; Pope's Dig., § 1036; A.S.A. 1947, § 67-825.

23-38-209. Excessive dividends — Liability of directors.

Any members of the board of directors of a building and loan association who knowingly vote to declare or who, being secretary or manager or auditor or examiner thereof, willfully declare, or advise the board of directors of the association to declare, a greater dividend than has actually been earned or has been previously accumulated as surplus by the association shall personally refund the dividend and be liable to the corporation for the amount in excess of earned dividends or accumulated surplus jointly and severally.

History. Acts 1929, No. 128, § 44, as added by Acts 1931, No. 236, § 17; Pope's Dig., § 1021; A.S.A. 1947, § 67-826.

23-38-210. Loans and investments generally.

(a)(1) Loans made by a building and loan association operating under this act shall be made to its members or certificate holders, accompanied by a transfer and pledge of shares or units issued by the association or secured by a mortgage or deed of trust on improved real estate which is unencumbered, except for prior liens owned by the association and taxes and assessment liens for improvements not yet due.

(2) The association shall be empowered to make such other loans as are authorized by the Federal Home Loan Bank or by the Federal Savings and Loan Insurance Corporation [abolished].

(3) Loans may also be made to members or certificate holders upon pledge, assignment, and delivery to the association, but the loan shall not exceed the withdrawal value of the shares, stock, or certificate so pledged.

(b)(1) The board of directors of any association may invest funds in the treasury, in excess of the demands of members or certificate holders, in the securities of other Arkansas building and loan associations or in the obligations of the State of Arkansas or of the federal government or in loans to nonmembers on securities which the board of directors may approve. Loans to nonmembers shall not at any time exceed fifteen percent (15%) of the assets of the association.

(2) The board of directors of any association may invest excess funds in loans and advances of credit insured pursuant to the provisions of Title I of the National Housing Act and the amendments thereto.

History. Acts 1929, No. 128, § 11; 1931, No. 60, § 1; 1935, No. 40, § 1; Pope's Dig., § 985; Acts 1939, No. 343, § 2; 1955, No. 149, § 2; A.S.A. 1947, § 67-830.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery,

and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

Meaning of "this act". See note to § 23-38-203.

U.S. Code. Title I of the National Housing Act, referred to in this section, is codified as 12 U.S.C. § 1701 et seq.

23-38-211. Restrictions as to loans.

(a) No building and loan association shall make a mortgage loan to an officer, director, or employee of the association, either directly or indirectly, unless the loan is first approved unanimously by the members of the board of directors present at the next regular board meeting, the approval to be recorded by aye and nay vote in the minutes of the meeting of the board.

(b) No building and loan association shall make loans exceeding, in the aggregate:

(1) Five thousand dollars (\$5,000) to one (1) borrower upon real estate security if the assets of the association do not exceed fifty thousand dollars (\$50,000);

(2) Ten thousand dollars (\$10,000) to one (1) borrower upon real estate security if the assets of the association do not exceed two hundred thousand dollars (\$200,000);

(3) Fifteen thousand dollars (\$15,000) to one (1) borrower upon real estate security if the assets of the association do not exceed five hundred thousand dollars (\$500,000);

(4) Twenty-five thousand dollars (\$25,000) to one (1) borrower upon real estate security if the assets of the association do not exceed two million five hundred thousand dollars (\$2,500,000);

(5) One percent (1%) of the assets of the association to one (1) borrower on real estate security if the assets of the association exceed two million five hundred thousand dollars (\$2,500,000).

History. Acts 1929, No. 128, § 11a, as added by Acts 1931, No. 236, § 6; Pope's Dig., § 986; Acts 1955, No. 149, § 3; 1961, No. 73, § 4; A.S.A. 1947, § 67-831.

23-38-212. Conveyance of mortgaged property as transfer of shares securing loan.

The conveyance or transfer of property mortgaged to a building and loan association shall, unless otherwise stated in the instrument of conveyance, act as a transfer also of the shares or certificate of the association securing the loan.

History. Acts 1929, No. 128, § 37; Pope's Dig., § 1015; A.S.A. 1947, § 67-833.

23-38-213. Investment in real estate.

(a) Any building and loan association operating under the provisions of this act and having assets in excess of five hundred thousand dollars (\$500,000) may permanently invest a portion of its funds in real estate on which there is, or may be, erected a building suitable to be occupied as offices of the association and for revenue to be derived from rentals of that portion of the building which is not required by the association for its own use. The amount so invested shall not exceed the surplus and reserve of the association.

(b) The association may also acquire real estate in satisfaction of debts owing to it, previously contracted in the course of its business, or purchased under the foreclosure at sheriff's, judicial, or any other sale, public or private, upon which real estate the association may have or hold a mortgage lien or other interest or encumbrance for the purpose of securing any debts due it or for the protection of its interest in the real estate.

History. Acts 1929, No. 128, § 33; Pope's Dig., § 1010; A.S.A. 1947, § 67-834. **Meaning of "this act".** See note to § 23-38-203.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Banking Law, 8 U. Ark. Little Rock L.J. 547.

23-38-214. Valuation of real estate owned as an asset.

(a) In the event any real estate is acquired by any association through foreclosure, by purchase, or otherwise, the value of the real estate shall immediately be determined by the board of directors, which valuation shall in no case exceed the actual cost of the real estate to the association, unless the cost is in excess of the amount of the original mortgage, in which case the value shall be limited to that amount. The valuation, in either case, shall not be increased at any time by the addition of carrying charges.

(b) If real estate is owned by the association and not occupied in whole or in part by the association as its office within two (2) years after acquisition, there shall be annually charged off, as depreciation, a sum equal to not less than ten percent (10%) of the valuation as prescribed in this section.

(c)(1) If, at any time, the Securities Commissioner should have reason to believe that real estate carried on the books of any association is in excess of its reasonable market value, then he or she is authorized to have an appraisal made of the real estate, at an expense not to exceed five dollars (\$5.00) for each appraisal, to be paid by the association, and to fix the amount at which the real estate is being carried on the books of the association to conform to the appraised value.

(2) If the board of directors of the association considers that the appraised value does not reflect the fair market value of the property, it has the right to submit additional information as to the value of each and every piece of property which, in its opinion, has been undervalued, with request for reconsideration and review. Upon reconsideration and review of all the information at hand, the value as fixed by the commissioner shall become final.

History. Acts 1929, No. 128, § 34; 1931, No. 236, § 14; Pope's Dig., § 1011; A.S.A. 1947, § 67-835.

23-38-215. Authority to borrow money.

(a) Building and loan associations of this state shall, subject to the prior approval of the Securities Commissioner in each instance as to the amount of the loan, have the power and authority to borrow money for corporate purposes, to issue negotiable notes therefor, to pledge and endorse and, from time to time, substitute their assets as may be required for the security of the repayment of the borrowed money.

(b) However, any loan made by any association from the Federal Home Loan Bank, or any successor thereof established under the authority of the United States, may be consummated in full legal effect by the association without obtaining either the prior or subsequent approval of the commissioner.

History. Acts 1933, No. 54, § 4; Pope's Dig., § 1038; A.S.A. 1947, § 67-838.

23-38-216. Expenses restricted.

(a) The expenses of any building and loan association operating in Arkansas shall not, in any fiscal year, exceed the total receipts from membership, withdrawal or cancellation fees, fines, plus two percent (2%) of the average amount of loans outstanding during the year on mortgages, shares, and other securities and investments in securities authorized by this act.

(b) However, if any building and loan association operating in the State of Arkansas during any fiscal year has reserve funds on hand of more than ten percent (10%) of the association's assets, it may take three percent (3%) of the average amount of loans outstanding during that fiscal year on mortgages, shares, and other securities and investments in securities authorized by this act, in addition to the total receipts from membership, withdrawal, or cancellation fees, or fines, for expenses of operating.

(c) The term "expenses", as used in this section, shall not be construed to include:

(1) Taxes, assessments, repairs, or insurance on real estate owned by the association, dividends or interest, or the expenses of foreclosure or other litigation;

(2) Expenses of appraisals, attorney's fees for examination of title, premiums for title insurance, recording fees, or other expenses which are usually incurred in connection with loaning funds of the association; and

(3) Premiums paid for the insurance of its shares, cost of examination and audit, or any other expense required by the Securities Commissioner or the Federal Home Loan Bank.

History. Acts 1929, No. 128, § 40; **Meaning of "this act".** See note to Pope's Dig., § 1018; Acts 1939, No. 169, § 23-38-203. § 1; A.S.A. 1947, § 67-836.

23-38-217. Losses — Reduction of liability to members.

(a) Whenever the losses of any building and loan association, resulting from depreciation in value of its securities or otherwise, exceed its contingent reserve fund, undivided profits, and current earnings so that the estimated value of its assets is less than the total amount due its members, the Securities Commissioner shall order a reduction of its liability to its members in a manner which distributes the loss equitably among the members.

(b) If, thereafter, the association shall realize from the assets a greater amount than was fixed in the order of reduction, the excess shall be divided among members whose credits were so reduced, but to the extent of the reduction only.

History. Acts 1929, No. 128, § 34a, as added by Acts 1931, No. 236, § 15; Pope's Dig., § 1012; A.S.A. 1947, § 67-837.

23-38-218. Sale of assets.

(a) At any regular meeting of the shareholders of any building and loan association, or at any special meeting of the shareholders of the association, in either case called to consider the action and held in accordance with the laws governing the association, the shareholders, by affirmative vote of two-thirds ($\frac{2}{3}$) of the outstanding shares, may authorize the sale of all or a portion of the assets of the association to another building and loan association or to a federal savings and loan association.

(b) The sale shall be on terms and under conditions which may be adopted in the shareholders' meeting. Upon authority given the directors of the association in the meeting, they are authorized to proceed to consummate the sale.

History. Acts 1935, No. 128, § 5; Pope's Dig., § 1043; A.S.A. 1947, § 67-847.

23-38-219. Subscription for stock in corporation created by act of Congress.

Any building and loan association organized under the laws of the State of Arkansas shall have authority to subscribe for stock in any corporation created by an act of Congress when subscription is required by the act of Congress as a condition precedent to the securing of a loan to the building and loan association from any corporation created by the act of Congress.

History. Acts 1932 (2nd Ex. Sess.), No. 11, § 1; Pope's Dig., § 1028; A.S.A. 1947, § 67-839.

23-38-220. Foreign associations.

(a) Foreign building and loan associations may be permitted to transact business in the State of Arkansas in the manner provided in this section, and a foreign association which is not admitted according to the provisions of this section shall not transact any business whatever in this state.

(b)(1) A foreign association applying for permit to do business in the State of Arkansas shall file with the Securities Commissioner a copy of its articles of incorporation, bylaws, plan of operation, and its most recent financial statement.

(2) It shall deposit with the commissioner one hundred thousand dollars (\$100,000) of bonds of the State of Arkansas or of some subdivision thereof, or other evidence of obligations of the State of Arkansas or some subdivision thereof, or certificates of full paid shares in Arkansas building and loan associations, or United States bonds, which securities so filed shall be subject to the approval of the commissioner. However, any foreign corporation authorized to do business in Arkansas on January 1, 1929, shall not be required to deposit the securities required in this subdivision.

(c) The securities thus filed with the commissioner under the provisions of this section shall be held by him or her in trust for the exclusive benefit and security of the creditors and shareholders of the association who are residents of this state. The interest or income of any securities so deposited shall accrue to and be used by the association depositing them, so long as the association fulfills its obligations and complies with the provisions of this chapter.

(d) After the articles of incorporation, bylaws, plan of operation, and financial statement shall have been approved, together with the approval of the securities required by the provisions of this section, the commissioner may issue a certificate of authority to do business in the State of Arkansas. The certificates shall be for one (1) year from March 1, and must be renewed annually. A fee of two hundred fifty dollars (\$250) for each certificate of authority and each renewal thereof shall be charged and collected from each foreign association admitted.

(e) The commissioner may, however, before issuing the certificate of authority, exercise the right of examinations, and the expense and fees for the examination shall be paid by the association applying, regardless of whether the application is granted or denied.

(f)(1) All securities delivered to the commissioner under the terms of this section shall be deposited with the Treasurer of State, who, with his or her sureties, shall be responsible for the safekeeping thereof. The Treasurer of State shall surrender the securities only upon the written order of the commissioner.

(2) If the commissioner shall become convinced at any time that any securities held under the terms of this section have suffered depreciation in value, he or she shall require additional securities.

(3) The commissioner may also, upon request of the owner, permit exchanges of securities upon proper approval of the new securities by the commissioner.

(g) Every foreign association admitted to do business in Arkansas shall file with the commissioner an instrument in writing properly executed, agreeing that any summons or other process of any court of competent jurisdiction may issue against it from any county in the State of Arkansas, and when served upon the commissioner shall be accepted by him or her, irrevocably, as a valid service upon the foreign association. However, the commissioner shall send, by registered mail, a copy of the legal process served upon the commissioner to the home office of the foreign association, and the commissioner shall, within six (6) days after service upon him or her, certify to the court from which the summons or process issued the fact of the acceptance of service and mailing.

(h) No foreign association shall be admitted to do business in this state if it has a name identical with that of any domestic association or with any other foreign association previously admitted or has a name so similar as to cause confusion.

(i) The provisions of this section shall not apply to any foreign association, a majority of whose directors are residents of the State of Arkansas.

History. Acts 1929, No. 128, § 32; Pope's Dig., § 1009; A.S.A. 1947, § 67-863.

CASE NOTES

ANALYSIS

Doing Business in State.
Taxation.

Doing Business in State.

Foreign loan association licensed annually for a number of years, though not selling any new shares of stock or making any new loans in this state, but selling its

properties, taking mortgages back from purchasers, refinancing its loans and servicing all its loans, was transacting business in this state. *Midland Sav. & Loan Co. v. Jernigan*, 196 Ark. 1055, 120 S.W.2d 1010 (1938).

Taxation.

It is not the actual transaction of the business of a building and loan associa-

tion that makes it subject to the taxes imposed by Acts 1929, No. 128, but it is the privilege of doing so under Acts 1929, No. 128, which exempts it from other

state, county or municipal occupation or privilege taxes. *Midland Sav. & Loan Co. v. Jernigan*, 196 Ark. 1055, 120 S.W.2d 1010 (1938).

SUBCHAPTER 3 — LIQUIDATION

SECTION.

- 23-38-301. Voluntary liquidation.
- 23-38-302. Notice of insolvency or illegal practices.
- 23-38-303. Appointment of receiver or conservator.
- 23-38-304. Duties of receiver or conservator generally — Dissolution of association.

SECTION.

- 23-38-305. Loans from federal agencies — Authority of receiver.
- 23-38-306. Loans from federal agencies — Court approval.
- 23-38-307. Repayment of loans during liquidation.

Effective Dates. Acts 1931, No. 236, § 19: effective on passage.

Acts 1932 (2nd Ex. Sess.), No. 10, § 8: approved Apr. 5, 1932. Emergency clause provided: "Whereas several insolvent building and loan associations in the State of Arkansas are now in liquidation; and whereas because of the present unprecedented economic depression, the process of realizing, through ordinary liquidation, upon the assets of such building and loan association is exceedingly slow; and whereas it is apparent that it will take an indefinite time to liquidate such building and loan associations, to the great detriment of members which will react unfavorably upon business and economic conditions of the entire State; and whereas the procurement of loans to insolvent building and loan associations affords a means of economic relief in the State which is of the utmost importance; therefore, it is hereby declared that an emergency exists and this act is necessary for the immediate preservation of the public peace, health and safety, and it is declared that this law shall be in full force and effect from and after its passage."

Acts 1933, No. 54, § 7: Feb. 22, 1933. Emergency clause provided: "Because of

the distressed financial condition of the people of Arkansas and the lack of available funds, and because of the fact that the laws of this State do not provide adequately for the proper control and regulation of building and loan associations, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 1043, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Building and Loan Act currently does not give the Savings and Loan Supervisor the authority to petition Chancery Court for the appointment of a conservator should conditions warrant. The lack of such authority could cause undue hardship for the Savings and Loan Supervisor and Arkansas chartered savings and loan associations. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 13 *Am. Jur. 2d*, Bldg. & L. Asso., § 98 et seq.

C.J.S. 12 *C.J.S.*, Bldg. & L. Asso., § 129 et seq.

23-38-301. Voluntary liquidation.

(a)(1) By action of its shareholders or certificate holders at the annual meeting or at any meeting specially called for the purpose and by vote of two-thirds ($\frac{2}{3}$) of the holders present in person or by proxy at the meeting, any building and loan association of this state may resolve to liquidate the association and adopt a plan therefor. Each shareholder or certificate holder is entitled to vote, with respect to the question of liquidation, one (1) vote for each twenty-five dollars (\$25.00) of the face value of the number of shares or certificates which he or she owns, whether or not he or she is entitled to vote his or her shares or certificates respecting other matters.

(2) In the event that the Securities Commissioner has ordered the association to suspend the payment of dividends or the distribution of profits on its shares or certificates pursuant to § 23-38-208, and in the further event that the commissioner finds and certifies that an emergency exists in the affairs of the association requiring action before the shareholders or certificate holders of the association can meet in the annual or special meeting, then the board of directors of the association may resolve voluntarily to liquidate the association and may adopt a plan of liquidation. In instances of action by either shareholders or certificate holders or the board of directors, this plan is subject to modifications or additions, made either prior or subsequent to the approval of the plan by the commissioner, which may from time to time be required by the commissioner and approved by the board of directors of the association.

(b) Before a resolution providing for liquidation shall take effect, a copy thereof, together with a complete detailed outline of the plan certified by the president and secretary of the association, together with a statement of the assets and liabilities of the association verified by oath of a majority of its board of directors, shall be filed with the commissioner.

(c)(1) From and after the approval of the resolution and plan, the latter modified or added to as aforesaid, by the commissioner, the association shall not issue any further stock or certificates nor make any further loans, and all of its income and receipts in excess of the actual expenses of liquidation shall first be applied towards the discharge of its liabilities for borrowed money.

(2) The officers of the association, under the direction of its board of directors and the supervision of the commissioner, shall then proceed with the liquidation by reducing the assets of the association to cash and distributing them among its shareholders and certificate holders in proportion to the withdrawal value of their respective holdings existing at the date of the passage of the resolution for voluntary liquidation.

(3) The expenses of the liquidation, the sales or compromises of assets of the association in the course of liquidation, and the distribution among the shareholders and certificate holders shall be incurred or had only after the approval in each instance of the commissioner.

(d) Each director of the association shall hold office until the election and acceptance of office of his or her successor, and the resignation of any director shall not become effective until the commissioner approves it. In the event of a vacancy upon the board of directors of the association by death or approved resignation, the remaining directors shall fill the vacancy until a director has been regularly elected and accepted his or her position.

History. Acts 1933, No. 54, § 1; Pope's Dig., § 1035; A.S.A. 1947, § 67-848.

23-38-302. Notice of insolvency or illegal practices.

(a) If, from any source, it shall come to the knowledge of the Securities Commissioner that the assets of any building and loan association operating in this state have become impaired, and that it is insolvent; or that it is conducting its business in a fraudulent, illegal, or unsafe manner, which will jeopardize the safety of the investments therein; or that the amount of the paid-in guaranty permanent shares of any guaranty association is less than the ratio prescribed in this act to be maintained, as compared with its liabilities to other classes of shares and creditors, it shall be the duty of the commissioner to notify each officer and director of the association of the facts which have come to his or her knowledge.

(b) In case the assets of a mutual, serial, or Dayton optional payment plan association have become impaired and it is insolvent, the notice shall direct that effective steps be taken to restore the association to solvency, and that the commissioner be notified within a reasonable time, to be stated in the notice, of the action taken to carry out the directions thus given.

(c) In case the assets of a guaranty association have become impaired and it is insolvent, or if the ratio between the amount paid in on its guaranty permanent shares and its liabilities to all other classes of shares and creditors is less than the ratio prescribed in this act, the notice shall direct that an assessment shall be levied pro rata upon all the guaranty permanent shares at a rate sufficient to make good the impaired assets or correct the impaired ratio and applied for that purpose, or that other effective steps be taken to correct the shortages. The notice shall also direct that the commissioner be notified, within a reasonable time specified in the notice, of what steps have been taken to carry out the directions thus given.

(d) In case any association is conducting its business in a fraudulent, illegal, or unsafe manner, the notice shall direct that the association discontinue its fraudulent, illegal, and unsafe methods and practices, within a reasonable time which the notice shall specify, and that the commissioner shall be notified within that time as to what steps have been taken to comply with the notice.

History. Acts 1929, No. 128, § 23; 23-38-201 — 23-38-207, 23-38-209 — 23-38-214, 23-38-216, 23-38-217, 23-38-220, Pope's Dig., § 999; A.S.A. 1947, § 67-849.
Meaning of "this act". Acts 1929, No. 23-38-302 — 23-38-304, 23-38-307, 23-38-128, codified as §§ 23-38-101, 23-38-102, 401 — 23-38-404.

23-38-303. Appointment of receiver or conservator.

(a)(1) In case any association notified as provided in § 23-38-302 shall fail or neglect to comply with notice thus given within the time stipulated in the notice, or in the event the Securities Commissioner shall be of the opinion that the association is in an insolvent condition, the commissioner is authorized and directed to file a petition in the circuit court in the county where the principal office of the association is situated alleging the insolvency of the association or that the association is conducting its business in a fraudulent, illegal, or unsafe manner and that it has failed to discontinue the fraudulent, illegal, or unsafe practices within a reasonable time after notice from the commissioner.

(2) If the commissioner, upon investigation, finds that the association has been conducting its affairs in an illegal or fraudulent manner and the illegal or fraudulent practices, in the opinion of the commissioner, have rendered the condition of the association insolvent or if continued would jeopardize the financial condition of the association, the commissioner is vested with authority, without notice to the association, to file a petition in the circuit court setting up the illegal or fraudulent practices and asking for a receiver or conservator for the association.

(b) In all cases in which the commissioner files a petition for a receiver or conservator, he or she shall attach to his or her petition, as soon as practicable after filing, a full and true statement of the affairs and conditions of the association, including an itemized statement of its assets and liabilities.

(c)(1) After the association has been served with the notice of the filing of the petition, the circuit court, if in session, and if not in session then in vacation, shall hear the petition. Upon finding that the association is insolvent or is conducting its business in a fraudulent, illegal, and unsafe manner, it shall appoint a receiver or conservator to take over all books, papers, records, and effects of every description belonging to the association, or on petition filed in circuit court, signed by five percent (5%), in amount, of the share or certificate holders of the association who shall be required to give opposite each person's name the number and amount of shares or certificates held in the association.

(2) The circuit court shall not be vested with authority to appoint a receiver or conservator for a building and loan association chartered under the laws of this state except on petition filed by the commissioner.

History. Acts 1929, No. 128, § 24; Acts 1985, No. 1043, § 1; A.S.A. 1947, 1931, No. 236, § 11; Pope's Dig., § 1000; § 67-850.

23-38-304. Duties of receiver or conservator generally — Dissolution of association.

(a) Before entering upon the duties of his or her office, the receiver or conservator shall be required by the court to execute to the association good and sufficient bond, conditioned for the faithful discharge of his or her duties, which bond shall be approved and filed with the circuit court.

(b)(1) If a conservator is appointed for the association, the conservator shall take possession of the association in accordance with the terms of the appointment and shall, at that time, give notice of the circuit court's action to any officer or employee in the home office who appears to be in charge of that office.

(2) On taking possession, the conservator shall immediately take possession of the association's books, records, and assets.

(3) A conservator shall, without further action, succeed to the rights, titles, powers, and privileges of the association and to the rights, powers, and privileges of its members, officers, and directors. No member, officer, or director shall thereafter have or exercise any such right, power, or privilege or act in connection with any of the association's assets or property.

(4) The circuit court may at any time, on proper showing by the Securities Commissioner, direct the conservator to turn over the association to its previous management, new management, or receiver.

(c)(1) If a receiver is appointed, the receiver shall be charged with the collection of all dues, interest, and other charges accruing upon the mortgages, notes, or other claims owing to the association but shall receive no further dues or other payments upon any shares, stock, or certificates issued by the association and shall issue no further shares, stock, or certificates of the association.

(2) The receiver shall pay, and procure the discharge of, all preferred debts and obligations of the association. After paying the necessary legal expenses of his or her receivership, he or she shall distribute the balance of the assets from time to time under orders from the circuit court pro rata to the liabilities of the association to the holders of its shares, stock, and certificates in proportion to the sums paid in on its several outstanding shares, stock, and certificates.

(3) To facilitate the work of liquidation of the association, the receiver may, and, on orders from the circuit court to do so, shall, negotiate for the sale and transfer of the mortgages and other assets and property of the association to other corporations or persons, subject always to the vested and accrued rights of the mortgagors. Before the sale or transfer is carried out and consummated, a full report of the negotiations and the proposed terms and conditions of the sale and transfer shall be filed with and approved by the circuit court.

(d) The compensation to be allowed a receiver or conservator under this section shall be an amount reasonable in proportion to the value of the property of the association and shall be fixed by the circuit court. All

expenses necessary in carrying out the receivership or conservatorship shall be paid out of the assets of the association as directed by the circuit court.

(e)(1) Upon completion of the duties entrusted to him or her, the receiver shall prepare a statement to that effect, reciting therein that all the liabilities of the association have been completely discharged as far as its assets will permit and that its assets and property are distributed among all the persons entitled thereto. The statement shall be subscribed and sworn to by the receiver and filed with the circuit court, and a notice of the dissolution shall be published for three (3) successive weeks in a newspaper published in the county where the principal office of the association is located.

(2) Upon the filing of the statement, making publication of notice as aforesaid, and the approval and confirmation of the statement and report by the circuit court, the association shall be deemed liquidated and dissolved.

History. Acts 1929, No. 128, § 24; Acts 1985, No. 1043, § 1; A.S.A. 1947, 1931, No. 236, § 11; Pope's Dig., § 1000; § 67-850.

23-38-305. Loans from federal agencies — Authority of receiver.

(a) The receiver in charge of any insolvent building and loan association, on behalf of that association, may apply for and procure loans from a lending agency of the United States government. The proceeds of those loans may be paid to creditors of the insolvent building and loan association.

(b) To evidence liability for the repayment of loans, the receiver, as custodian of the insolvent building and loan association, may execute and deliver to the lending agency of the United States Government from whom the loan is procured promissory notes which will constitute the obligation of the building and loan association named therein.

(c) In order to secure the payment of the notes given as provided in subsection (b) of this section, the receiver may assign, convey, mortgage, pledge, and hypothecate to the lending agency of the United States Government any and all assets of the insolvent building and loan association receiving the loan, which assignment, conveyance, mortgage, pledge, or hypothecation will operate to confer upon the lending agency a first lien upon the assets thus given as collateral.

(d) To facilitate and effectuate the procurement and consummation of these loans, the receiver may execute and deliver to the lending agency of the United States Government any applications, warranties, statements, information forms, contracts, agreements, and other instruments which may be required by the lending agency.

(e) The authority to procure loans herein conferred upon the receiver of insolvent building and loan associations includes the authority to renew them from time to time.

History. Acts 1932 (2nd Ex. Sess.), No. 1034; A.S.A. 1947, §§ 67-851 — 67-854, 10, §§ 1-4, 6; Pope’s Dig., §§ 1029-1032, 67-856.

23-38-306. Loans from federal agencies — Court approval.

(a) The right of the receiver to procure and consummate any loans as provided in § 23-38-305 shall be subject to the approval of the circuit court having jurisdiction over the administration of the affairs of the insolvent building and loan association on behalf of which the loan is sought.

(b)(1) When, in any instance, the receiver desires to apply for a loan on behalf of an insolvent building and loan association in his or her custody, he or she shall forthwith cause a notice to be published for one (1) insertion in some newspaper published and having a general circulation in the county in which the building and loan association is located or, if no such newspaper is published in the county, in a newspaper published in Little Rock, Arkansas, and having a statewide circulation. This notice shall be upon the following form:

“NOTICE TO CREDITORS AND STOCKHOLDERS of
Building and Loan Association:

You are notified that the undersigned Receiver is applying on behalf of the above named insolvent building and loan association for a loan from, said loan to be secured by a specific pledge of assets of said building and loan association. On the day of, 20, at the hour of o’clock M., a petition setting forth the terms of said loan will be submitted to the Circuit Court of County, Arkansas, at (here indicate place where petition to be submitted), at which time said Court will be asked to approve and authorize the procurement and consummation of said loan.

A copy of the petition to be submitted as aforesaid will be filed in the office of the Clerk of said Court at least three (3) days before the submission of said petition.

Any persons desiring to object to the granting of said petition are required by law to file their exceptions thereto with the above Court on or before the date of hearing above mentioned.

This day of, 20.....

.....
Receiver of
Building & Loan Association”

(2) The date of hearing specified in the notice shall be at least ten (10) days subsequent to the publication of the notice.

(c)(1) The receiver’s petition for authority to procure the loan must be filed in the office of the clerk of the court at least three (3) days before the date set for the presentation of the petition. If, on the date designated in the notice, the petition has not been on file with the clerk of the court for a full three (3) days, the court shall order an adjournment or adjournments which will ensure that the petition lies in the office of the clerk of the court for three (3) days before its presentation.

(2) The petition to be filed and presented by the receiver as aforesaid shall set forth the terms of the proposed loan and contain the receiver's recommendations.

(d)(1) If any exceptions to the proposed loan, or the terms of the loan, shall be filed by authorized exceptors at or before the hearing of the petition, the circuit court shall dispose of them as promptly as possible, making any orders in respect thereto which it deems proper.

(2) If no written exceptions are filed on or before the hearing, the court shall pass upon the petition without delay and shall approve it if, in the opinion of the court, approval is deemed proper.

(e) An order of approval shall be subject to appeal, which must be taken in twenty (20) days, by any persons who may have filed written exceptions on or prior to the hearing, but the order shall not be subject to appeal or review on the prayer of any person who did not file written exceptions to the petition on or before the hearing.

(f) In exercising its jurisdiction, the circuit court may hear petitions and make orders in vacation as well as in term time.

(g) All presumptions usually indulged in favor of the judgments of courts of superior jurisdiction shall be indulged in favor of the validity of a judgment approving a loan application under this section.

(h) All appeals under this section will be advanced as a matter of public interest.

History. Acts 1932 (2nd Ex. Sess.), No. 10, § 5; Pope's Dig., § 1033; A.S.A. 1947, § 67-855.

23-38-307. Repayment of loans during liquidation.

(a) Any borrower from a domestic building and loan association, which is in voluntary or involuntary liquidation, or which has been legally declared insolvent, who, at the time of the liquidation or insolvency, is indebted to the association, shall be charged with the amount due on the loan or advance and with any other indebtedness due the association by the borrower at the time of liquidation or insolvency.

(b) The borrower shall be given credit on his or her loan or advance for the amount theretofore paid on his or her stock, bond, investment certificate, membership certificate, or other evidence of shares, as the case may be, less any fees, fines, or penalties due the association by the borrower.

History. Acts 1929, No. 128, § 11c, as added by Acts 1931, No. 236, § 7; Pope's Dig., § 987; A.S.A. 1947, § 67-832.

CASE NOTES

ANALYSIS

Applicability.

Stocks, Investment Certificates, Etc.

Applicability.

This section did not apply to contracts in existence at the time of its passage. *Lacefield v. Taylor*, 185 Ark. 648, 48 S.W.2d 832 (1932).

Stocks, Investment Certificates, Etc.

This section refers to the investment certificate issued to a borrower in connection with his loan and which was mortgaged or pledged to the association as

security thereof, but it does not permit a borrowing stockholder to go out and buy fully paid investment stock or certificates at a discount or otherwise and then offset them against his debt to the association. *Republic Bond & Mtg. Co. v. Sibley*, 198 Ark. 497, 129 S.W.2d 236 (1939).

Fact that building and loan association had permitted other persons to obtain a preference by offsetting fully paid stock acquired from others against indebtedness would not estop the association from insisting upon enforcement of its bylaws and the positive provision of this section. *Republic Bond & Mtg. Co. v. Sibley*, 198 Ark. 497, 129 S.W.2d 236 (1939).

SUBCHAPTER 4 — PROHIBITED PRACTICES

SECTION.

23-38-401. Embezzlement, unauthorized acts, etc.

23-38-402. Publication of false advertisement or report of financial condition.

SECTION.

23-38-403. Suppressing evidence.

23-38-404. Circulation of false statements injurious to association.

Effective Dates. Acts 1931, No. 236,
§ 19: effective on passage.

23-38-401. Embezzlement, unauthorized acts, etc.

(a) Every officer, director, member of any committee, clerk, or agent of any building and loan association doing business in this state who commits the following acts with intent to deceive, injure, or defraud the association or any association member or for the purpose of inducing any person to become a member thereof or to deceive anyone appointed to examine the affairs of the association shall be deemed guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a period of not less than one (1) year nor more than ten (10) years:

(1) Embezzles, abstracts, or misapplies any of the moneys, funds, or credits of the association;

(2) Issues or puts into circulation any stock or certificates or other orders without proper authority;

(3) Issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or any other written instrument belonging to the association; or

(4) Certifies to or makes a false entry in any book, report, or statement of or to the association.

(b) Whoever, with intent to deceive, injure, or defraud a building and loan association, aids or abets any officer, member of any committee, or other person in committing any of the prohibited acts enumerated herein shall be deemed guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a period of not less than one (1) year nor more than ten (10) years.

History. Acts 1929, No. 128, § 43, as added by Acts 1931, No. 236, § 16; Pope's Dig., § 1020; A.S.A. 1947, § 67-864.

23-38-402. Publication of false advertisement or report of financial condition.

Every director, officer, or agent of any building and loan association doing business in this state who knowingly concurs in making, publishing, circulating, or posting, either generally or privately to the stockholders or others, any advertisement, sign, written report, exhibit; statement of its affairs or financial condition, written or verbal; any book or notice containing any material statement that is false; or any untrue or fraudulently exaggerated reports, prospectus, account, statement of operations, values, business, profits, expenditures, or prospectus of any other property or documents intended to produce or give the shares of stock in the association a greater value or a less apparent or market value than they really possess or that misrepresents in any way the powers or liabilities of the association shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1929, No. 128, § 31; Pope's Dig., § 1008; A.S.A. 1947, § 67-865; Acts 2005, No. 1994, § 151.

23-38-403. Suppressing evidence.

Every officer, director, employee, or agent of any building and loan association who, for the purpose of concealing any fact or suppressing any evidence against himself or herself or against any other person, abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any building and loan association or of the Securities Commissioner shall be guilty of a Class D felony.

History. Acts 1929, No. 128, § 45, as added by Acts 1931, No. 236, § 18; Pope's Dig., § 1022; A.S.A. 1947, § 67-866; Acts 2005, No. 1994, § 434.

23-38-404. Circulation of false statements injurious to association.

Any person who shall knowingly make, utter, or circulate any statement untrue in fact and derogatory to the financial condition of any building and loan association in this state with the purpose to

injure the association shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500).

History. Acts 1929, No. 128, § 30; Pope's Dig., § 1007; A.S.A. 1947, § 67-867; Acts 2005, No. 1994, § 445.

CHAPTER 39

MORTGAGE LOAN COMPANIES AND LOAN BROKERS

SUBCHAPTER.

1. GENERAL PROVISIONS. [REPEALED.]
2. SUPERVISION. [REPEALED.]
3. REGISTRATION AND OPERATION. [REPEALED.]
4. PROHIBITION OF ADVANCE FEE LOAN BROKERAGE.
5. FAIR MORTGAGE LENDING ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-39-101 — 23-39-105. [Repealed.]

23-39-101 — 23-39-105. [Repealed.]

Publisher's Notes. This subchapter, concerning general provisions, was repealed by Acts 2003, No. 554, § 2. The subchapter was derived from the following sources:

23-39-101. Acts 1977, No. 806, § 1; A.S.A. 1947, § 67-2201.

23-39-102. Acts 1977, No. 806, § 2; A.S.A. 1947, § 67-2221.

1981, No. 225, § 1; A.S.A. 1947, § 67-2202; Acts 1993, No. 437, § 1.

23-39-103. Acts 1977, No. 806, § 22; A.S.A. 1947, § 67-2222.

23-39-104. Acts 1977, No. 806, § 20; A.S.A. 1947, § 67-2220.

23-39-105. Acts 1977, No. 806, § 21; A.S.A. 1947, § 67-2221.

SUBCHAPTER 2 — SUPERVISION

SECTION.

23-39-201 — 23-39-206. [Repealed.]

23-39-201 — 23-39-206. [Repealed.]

Publisher's Notes. This subchapter, concerning supervision, was repealed by Acts 2003, No. 554, § 2. The subchapter was derived from the following sources:

23-39-201. Acts 1977, No. 806, § 9; A.S.A. 1947, § 67-2209.

23-39-202. Acts 1977, No. 806, § 15; A.S.A. 1947, § 67-2215.

23-39-203. Acts 1977, No. 806, § 10; A.S.A. 1947, § 67-2210.

23-39-204. Acts 1977, No. 806, §§ 11-13; A.S.A. 1947, §§ 67-2211 — 67-2213.

23-39-205. Acts 1977, No. 806, § 23; A.S.A. 1947, § 67-2223.

23-39-206. Acts 1977, No. 806, § 16; A.S.A. 1947, § 67-2216.

SUBCHAPTER 3 — REGISTRATION AND OPERATION

SECTION.

23-39-301 — 23-39-309. [Repealed.]

23-39-301 — 23-39-309. [Repealed.]

Publisher's Notes. This subchapter, concerning registration and operation, was repealed by Acts 2003, No. 554, § 4. The subchapter was derived from the following sources:

23-39-301. Acts 1977, No. 806, § 19; A.S.A. 1947, § 67-2219.

23-39-302. Acts 1977, No. 806, § 3; 1981, No. 225, § 2; A.S.A. 1947, § 67-2203.

23-39-303. Acts 1977, No. 806, § 4; 1981, No. 225, § 3; A.S.A. 1947, § 67-2204.

23-39-304. Acts 1977, No. 806, § 6; A.S.A. 1947, § 67-2206; Acts 1999, No. 362, § 1.

23-39-305. Acts 1977, No. 806, § 7;

1985, No. 932, § 2; A.S.A. 1947, § 67-2207.

23-39-306. Acts 1977, No. 806, § 5; 1979, No. 673, § 1; 1983, No. 792, § 1; 1985, No. 932, § 1; A.S.A. 1947, § 67-2205; Acts 1987, No. 446, § 1; 1995, No. 785, § 1; 1997, No. 537, § 1; 1999, No. 362, § 2.

23-39-307. Acts 1977, No. 806, § 8; A.S.A. 1947, § 67-2208; Acts 1999, No. 362, § 3.

23-39-308. Acts 1977, No. 806, § 14; A.S.A. 1947, § 67-2214.

23-39-309. Acts 1977, No. 806, §§ 17, 18; A.S.A. 1947, §§ 67-2217, 67-2218; Acts 1999, No. 362, § 4.

SUBCHAPTER 4 — PROHIBITION OF ADVANCE FEE LOAN BROKERAGE

SECTION.

23-39-401. Definitions.

23-39-402. Nonexclusive remedy.

23-39-403. Liability of loan broker's principal.

SECTION.

23-39-404. Prohibited acts.

23-39-405. Remedies and penalties.

23-39-401. Definitions.

For purposes of this subchapter, unless the context otherwise requires:

(1) "Advance fee" means any consideration which is assessed or collected prior to the closing of a loan by a loan broker;

(2) "Affiliate" means any person who, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person;

(3) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit;

(4) "Closing of a loan" means completion of the final steps of the transaction, except for the payment of consideration for loan services provided, whereby the borrower has full access to and use of the benefits of the loan of money, a credit card, or a line of credit;

(5)(A) "Loan broker" means any person not exempt under subdivision (5)(B) of this section who:

(i) For or in expectation of consideration arranges, attempts to arrange, or offers to fund a loan of money, a credit card, or a line of credit;

(ii) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(iii) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(iv) Holds himself or herself out as a loan broker.

(B) The following persons or entities shall not be considered loan brokers under subdivision (5)(A) of this section:

(i) If licensed by and subject to regulation or supervision of any agency, commission, or department of the United States or of the State of Arkansas, and if engaged in the permitted activity granted pursuant to their license, permit, or registration or with express written authority for the activity from the regulatory or supervising agency:

(a) Bank;

(b) Savings and loan association;

(c) Trust company;

(d) Credit union;

(e) Investment company;

(f) Industrial loan company;

(g) Securities broker-dealer, agent, or investment adviser;

(h) Real estate broker or sales associate;

(i) Attorney;

(j) Federal Housing Administration or Department of Veterans Affairs approved lender;

(k) Credit card company;

(l) Mortgage loan company;

(m) Mortgage loan broker;

(n) Public utility;

(o) Insurance company or agent; or

(p) Motor vehicle manufacturer or dealer;

(ii) Subsidiaries of licensed or chartered consumer loan companies, banks, or savings and loan associations are not loan brokers;

(iii) A person extending or arranging credit, or offering to extend or arrange credit, to a partnership or corporation exclusively for commercial or business purposes;

(iv) A depository financial institution chartered or licensed by an agency, commission, or department of another state, if the funds on deposit with the institution are insured by the Federal Deposit Insurance Corporation;

(v) An affiliate of a person listed in subdivision (5)(B)(iii) of this section; or

(vi) A bona fide seller or lessor of goods, services, or interests in real estate in a transaction in which the seller or lessor extends, arranges, or offers to extend or arrange credit that is to be used exclusively for financing the purchase or lease or for services performed by an independent third party directly related to the purchase

or lease. A transaction shall not be exempt under this subdivision (5)(B)(vi) if the purchaser or lessee receives, or is to receive, a cash advance or consolidation loan in addition to the financing; and

(6) “Principal” means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

History. Acts 1993, No. 140, § 1; 1995, No. 598, § 1.

A.C.R.C. Notes. As originally enacted by Acts 1993, No. 140, this section began: “The definitions set forth in this provision

are for purposes of this Act and are not intended to alter the definitions which apply to the Mortgage Loan Company and Loan Broker Act as set forth in Arkansas Code § 23-39-102.”

CASE NOTES

Loan Broker.

The definition of “loan broker” does not alter any definitions which apply to the

Mortgage Loan Company and Loan Broker Act. *Hicks v. Madden*, 322 Ark. 223, 908 S.W.2d 90 (1995).

23-39-402. Nonexclusive remedy.

Nothing in this subchapter limits the rights or remedies which are otherwise available to a consumer under any other law.

History. Acts 1993, No. 140, § 5.

23-39-403. Liability of loan broker’s principal.

A principal of a loan broker shall be liable under this subchapter to the same extent as the loan broker himself or herself for any actions on behalf of the loan broker, or the loan broker’s agents or employees, which violate this subchapter.

History. Acts 1993, No. 140, § 3.

23-39-404. Prohibited acts.

It shall be unlawful for a loan broker to:

(1) Assess or collect an advance fee from a borrower to provide services as a loan broker; or

(2) Make or use unfair, false, misleading, or deceptive representations or to omit any material fact in the offer or sale of the services of a loan broker, or to engage, directly or indirectly, in any act that operates or would operate as an unfair, false, misleading, or deceptive representation in his or her business dealings.

History. Acts 1993, No. 140, § 2.

23-39-405. Remedies and penalties.

(a)(1) A violation of any of the provisions of this subchapter shall constitute an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to him or her for the enforcement of this subchapter.

(3) In any action brought by the Attorney General pursuant to this subsection, the Attorney General may also recover on behalf of borrowers the amounts specified under subsection (b) of this section.

(b)(1) A borrower may bring an action against the loan broker, its principals, employees, or agents, and against the surety bond, or trust account, if any, of the loan broker as a result of a violation of this subchapter.

(2) The action shall be brought in the county in which the solicitation was made, and the court shall award:

(A) An amount of three (3) times the amount paid by the borrower for the loan services or one thousand dollars (\$1,000), whichever is greater;

(B) Incidental and consequential damages; and

(C) Costs and reasonable attorney's fees.

(c) A permanent injunction, judgment, or order of the court obtained by the Attorney General pursuant to this section shall be prima facie evidence in an action brought under this section that the defendant used or employed a method, act, or practice declared unlawful by this subchapter.

(d) A person bringing an action under this section shall bring the action within one (1) year after any action brought by the Attorney General has been terminated or two (2) years after the violation occurred, whichever is later.

(e)(1) Any person who knowingly commits a practice defined as unlawful by this subchapter shall be guilty of a Class D felony and, upon conviction in the circuit court of any county in this state in which any portion of the unlawful practice occurred, shall be subject to punishment accordingly.

(2) If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly authorizes, orders, or performs an act in violation of this subchapter without regard to penalties imposed on the corporation.

History. Acts 1993, No. 140, § 4; 1995, No. 598, § 2.

SUBCHAPTER 5 — FAIR MORTGAGE LENDING ACT

SECTION.

23-39-501. Title.

23-39-502. Definitions.

23-39-503. License required — Licensee records.

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23-39-506. License renewal — Termination.

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- 23-39-510. Licensee duties.
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 - 23-39-513. Prohibited activities.
 - 23-39-514. Disciplinary authority.

- SECTION.
- 23-39-515. Review of order of the commissioner.
 - 23-39-516. Criminal penalty.
 - 23-39-517. [Repealed.]
 - 23-39-518. Cooperation with other regulatory agencies.

Effective Dates. Acts 2003, No. 554, § 5: January 1, 2004.

Acts 2003 (2nd Ex. Sess.), No. 26, § 3: Dec. 31, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that as a result of the Arkansas Supreme Court decision, *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 91 S.W.3d 472 (2002), additional revenue is necessary for the improvement of public schools, to provide all Arkansas children an adequate education, and to equalize funding for schools and teachers; that without additional revenue, the state will be unable to fulfill its constitutional duty to provide an adequate and equitable education to Arkansas children; that certain unintended and unnecessary restrictions on commercial lending in the state will occur as a result of the passage of Act 554 of the 84th General Assembly, Regular Session, which becomes effective January 1, 2004, and such unintended and unnecessary restrictions will slow the growth of and constrict the economy of the state, and thus reduce state revenues, and that this act is immediately necessary as it will avoid reduction of needed revenue for the support and improvement of public schools. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 1679, § 5: Apr. 5, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the requirement of three (3) years’ experience for branch managers and their on-site physical presence at the branch for which they are designated as manager creates a hardship resulting in the lack of ability of some companies to become licensed in this state; and that this act is immediately necessary because the provisions of this act relaxing these requirements will increase the ability of companies to effectively manage their branch offices. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-39-501. Title.

This subchapter may be referred to as the “Fair Mortgage Lending Act”.

History. Acts 2003, No. 554, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Lending Act, 26 U. Ark. Little Rock L. Rev. Legislation, 2003 Arkansas General Assembly, Insurance Law, Fair Mortgage 479.

23-39-502. Definitions.

As used in this subchapter:

(1) "Applicant" means a person who has applied to become licensed under this subchapter as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(2) "Branch manager" means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes a net branch or any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;

(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which due to the actions of any employee, associate, or loan officer of the licensee may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

(4) "Commissioner" means the Securities Commissioner and includes the commissioner's designees;

(5)(A) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

(B) A person is presumed to control a company if the person:

(i) Is a director, general partner, or executive officer of the company;

(ii) Directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security of the company or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities of the company;

(iii) In the case of a limited liability company, is a managing member of the limited liability company; or

(iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;

(6) “Control affiliate” means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;

(7) “Control person” means an individual who directly or indirectly exercises control over the applicant;

(8) “Employee” means an individual who is licensed with or employed by a mortgage broker, mortgage banker, or mortgage servicer, whether by employment contract, agency, or other arrangement and regardless of whether the individual is treated as an employee for purposes of compliance with the federal income tax laws;

(9)(A) “Exempt person” means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan officer under this subchapter.

(B) “Exempt person” includes any of the following:

(i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;

(iii) A trust company or industrial loan company chartered under the laws of Arkansas;

(iv) A small-business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as it existed on January 1, 2011;

(v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on January 1, 2011;

(vi) A state or federally chartered bank, savings bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or any of their operating subsidiaries;

(vii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the Farm Service Agency, Commodity Credit Corporation, Rural Development Housing & Community Facilities Programs, Farm Credit Administration, or the United States Department of Agriculture;

(viii) A nonprofit corporation that:

(a) Qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;

(b) Is not primarily in the business of soliciting or brokering mortgage loans; and

(c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;

(ix)(a) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.

(b) Notwithstanding subdivision (9)(B)(ix)(a) of this section, "exempt person" does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;

(x) A person who engages in seller-financed transactions or who as a seller of real property receives mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation if:

(a) The person does not receive from or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and

(b) The seller does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;

(xi) An individual or husband and wife who provide funds for investment in loans secured by a lien on real property on his or her or their own account and who do not:

(a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and

(b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;

(xii) An attorney at law rendering services in the performance of his or her duties as an attorney at law;

(xiii) A person performing any act under order of any court;

(xiv) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas and the real property that is the subject of the mortgage is located outside of Arkansas;

(xv) An officer or employee of an exempt person described in subdivisions (9)(B)(ii)-(xiv) of this section if acting in the scope of employment for the exempt person; and

(xvi) A manufactured home retailer and its employees if performing only administrative or clerical tasks in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage banker or a mortgage broker for the performance of the administrative or clerical tasks;

(10) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;

(11)(A) "Loan officer" means an individual other than an exempt person described in subdivision (9) of this section who in exchange for compensation as an employee of or who otherwise receives compensation or remuneration from a mortgage broker or a mortgage banker:

(i) Solicits or offers to solicit an application for a mortgage loan;

(ii) Accepts or offers to accept an application for a mortgage loan;

(iii) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(iv) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement.

(B) "Loan officer" does not include:

(i) An individual who performs clerical or administrative tasks in the processing of a mortgage loan at the direction of and subject to the supervision and instruction of a licensed loan officer;

(ii) An underwriter if the individual performs no activities under subdivision (11)(A) of this section; or

(iii) An individual who is solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as it existed on January 1, 2011;

(12) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;

(13) "Managing principal" means a person who meets the requirements of § 23-39-505 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer;

(14) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;

(15) "Mortgage broker" means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:

(A) Accepts or offers to accept an application for a mortgage loan;

(B) Solicits or offers to solicit an application for a mortgage loan;

(C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;

(16) "Mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:

(A) A dwelling as defined in section 1602(w) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2011; or

(B) Residential real estate upon which is constructed or intended to be constructed a dwelling;

(17) "Mortgage servicer" means a person that receives from or on behalf of a borrower:

(A) Funds or credits in payment for a mortgage loan; or

(B) The taxes or insurance associated with a mortgage loan;

(18) "Operating subsidiary" means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National

Credit Union Administration, maintains more than fifty percent (50%) voting rights, a controlling interest, or otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;

(19) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;

(20) "Principal place of business" means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private or in which the primary business functions of the licensee are conducted;

(21) "Reverse mortgage" means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity; and

(22) "Unique identifier" means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 1; 2009, No. 731, §§ 1-5; 2011, No. 894, §§ 1-4.

Amendments. The 2007 amendment added (1) and redesignated the remaining subsections accordingly; added "and includes a . . . or mortgage servicer" at the end of (3); deleted former (4); added (5) through (7); inserted "licensed with or" in (8); substituted "Rural Housing" for "Farmers Home" in (9)(B)(viii); in (9)(B)(x)(b), substituted "(9)(B)(x)(a)" for "(6)(B)(x)(a)" and deleted "an" following "section"; inserted "engages in seller-financed transactions, or who" in (9)(B)(xi); substituted "seller" for "maker of the liens or mortgages" in (9)(B)(xi)(b); substituted "(9)(B)(ii)-(xvi)" for "(6)(B)(ii)-(xvi)" in (9)(B)(xviii); in (11)(A), substituted "(9)" for "(6)" and inserted "or who otherwise receives compensation or remuneration from"; redesignated former (8)(A) through (8)(D) as present (11)(A)(i) through (11)(A)(iv); added (11)(B); and made related and stylistic changes.

The 2009 amendment, in (9)(B), deleted (9)(B)(iv), (9)(B)(xiv), and (9)(B)(xvii), redesignated the remaining subdivisions accordingly, inserted "as it existed on January 1, 2009" in (9)(B)(iv) and (9)(B)(v), in (9)(B)(vii) substituted "Farm Service Agency" for "United States Agricultural Stabilization and Conservation Service" and "Rural Development Housing & Community Facilities Programs" for "Rural Housing Administration," substituted "(9)(B)(ix)(a)" for "(9)(B)(x)(a)" in (9)(B)(ix)(b), substituted "(9)(B)(ii)-(xiv)" for "(9)(B)(ii)-(xvi)" in (9)(B)(xv), inserted (9)(B)(xvi); in (11), deleted "licensed under this subchapter" in (11)(A), inserted (11)(B)(iii), and redesignated the remaining text of (11)(B) accordingly; rewrote (16); deleted former (18), which defined "nonresidential mortgage loan"; added (21) and (22); and made related changes.

The 2011 amendment substituted "January 1, 2011" for "January 1, 2009" in (9)(B)(iv), (9)(B)(v), (11)(B)(iii), and (16)(A).

23-39-503. License required — Licensee records.

(a) It is unlawful for any person located in Arkansas other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage

banker, loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.

(c) It is unlawful for any person other than an exempt person to employ, to compensate, or to appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer under this subchapter.

(d)(1) The license of a loan officer shall terminate when his or her employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

(2) When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this subchapter or ceases to act as a loan officer, the mortgage broker or mortgage banker with which the person was affiliated or by which that person is employed shall notify the commissioner in writing within thirty (30) days from the date on which the loan officer ceased to be employed or ceased activities as a loan officer.

(3)(A) A licensee that does not comply with subdivision (d)(2) of this section shall pay a late fee of two hundred fifty dollars (\$250) for failure to timely notify the commissioner.

(B) The late fee may be waived, in whole or in part, in the sole discretion of the commissioner and for good cause shown.

(4) A loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.

(e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers employed by the mortgage broker or mortgage banker and who engage or attempt to engage in business with any person in Arkansas.

(f) No person other than an exempt person shall hold himself or herself out as a mortgage banker, mortgage broker, mortgage servicer, or loan officer unless the person is licensed in accordance with this subchapter.

History. Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 2; 2009, No. 731, § 6.

redesignated former (a)(1) as present (a); deleted (a)(2) and (a)(3); and rewrote (d)(2).
The 2009 amendment rewrote (d)(3)(A).

Amendments. The 2007 amendment

23-39-504. Rulemaking authority.

The Securities Commissioner may adopt any rules that he or she deems necessary to:

- (1) Carry out the provisions of this subchapter;
- (2) Provide for the protection of the borrowing public; and
- (3) Provide any requirements necessary for the State of Arkansas to participate in a multistate automated licensing system; and
- (4) Instruct mortgage brokers, mortgage bankers, mortgage servicers, and loan officers in interpreting this subchapter.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 3. added (3), redesignated former (3) as present (4), and made related changes.

Amendments. The 2007 amendment

23-39-505. Qualifications for licensure — Issuance.

(a)(1) A person desiring to obtain a license as a loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.

(2) The commissioner may approve by order a limited license with limitations, qualifications, or conditions.

(3) The application may require that the information be submitted in an electronic format.

(4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:

(A) The applicant's name, address, and social security number;

(B) The applicant's form of business and place of organization, including without limitation:

(i) A certified copy of the applicant's organizational and governance documents; and

(ii) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

(C)(i) The applicant's proposed method of and locations for doing business, if applicable.

(ii) The applicant's proposed method of doing business shall include whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;

(D)(i) The qualifications, business history, and financial condition of the applicant and any partner, officer, director, any person occupying a similar status or performing similar functions, any managing principal, or any person directly or indirectly controlling the applicant.

(ii) The qualifications and business history of persons under subdivision (a)(4)(D)(i) of this section shall include:

(a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;

(b) A conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services; and

(c) A felony conviction; and

(E) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant.

(b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least eighteen (18) years of age;

(2)(A) Have received a high school diploma or a general educational development certificate.

(B) Subdivision (b)(2)(A) of this section does not apply to an individual who is licensed as a loan officer on July 1, 2007;

(3) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose; and

(4) Furnish to the commissioner or through an automated licensing system, information concerning the applicant's identity and background, including:

(A) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; and

(B) Personal history and experience in a form prescribed by the automated licensing system and the commissioner, including the submission of authorization for the automated licensing system and the commissioner to obtain:

(i) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011; and

(ii) Information related to any administrative, civil, or criminal proceeding by a governmental jurisdiction.

(c) In addition to the requirements under subsections (a) and (b) of this section, each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:

(1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;

(2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described in subdivision (c)(1) of this section;

(3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described in subdivision (c)(1) of this section; and

(4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this section.

(d) Each applicant shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Each applicant for initial licensure shall pay a filing fee of:

(1) Seven hundred fifty dollars (\$750) for the principal place of business of a mortgage broker, mortgage banker, or mortgage servicer;

(2) One hundred dollars (\$100) for each branch office of a mortgage broker, mortgage banker, or mortgage servicer; and

(3) Fifty dollars (\$50.00) for each loan officer.

(f)(1)(A) Each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in the amount prescribed by rule or order of the commissioner.

(B) The amount of the surety bond prescribed by the commissioner under subdivision (f)(1)(A) of this section shall be:

(i) Based upon loan activity during the previous year; and

(ii) Not less than one hundred thousand dollars (\$100,000).

(2) The surety bond shall be in the form prescribed by the commissioner and shall run to the state for the benefit of any claimants against the licensee and loan officers employed by the licensee to secure the faithful performance of the obligations of the licensee and loan officers employed by the licensee under this subchapter.

(3) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(4) A party having a claim against the licensee may bring suit directly on the surety bond, or the commissioner may bring suit on behalf of any claimants, either in one (1) action or in successive actions.

(5) Consumer claims shall be given priority in recovering from the bond.

(g) Each applicant filing for licensure as a mortgage banker or mortgage servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000) and are:

(1) Prepared by an independent certified public accountant;

(2) Prepared in accordance with generally accepted accounting principles as promulgated by the Financial Accounting Standards Board;

(3) Accompanied by an opinion acceptable to the commissioner; and

(4) Dated within fifteen (15) months preceding the date on which the application is filed.

(h) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall be deemed to have met the qualifications for licensure as a loan officer upon filing a written application with the commissioner in the form prescribed by the commissioner and payment of the applicable fee.

(i) Each principal place of business and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.

(j) Except as set forth in § 23-39-503(d), each license issued by the commissioner under this subchapter expires at the close of business on December 31 of the calendar year unless the license is:

(1) Previously surrendered by the licensee and the surrender is accepted by the commissioner;

(2) Abandoned by the licensee as provided in § 23-39-506; or

(3) Suspended or revoked by the commissioner.

(k) Licenses issued under this subchapter are not transferable.

(l)(1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.

(2) A person seeking to acquire control of a licensee, at least thirty (30) days before the proposed change of control, shall:

(A) Pay the commissioner a fee of one hundred dollars (\$100);

(B) Submit to the commissioner:

(i) The information required under subdivision (a)(4)(D) of this section;

(ii) The proposed transaction documents; and

(iii) Any other information deemed relevant by the commissioner;

(C) Submit financial statements according to subsection (g) of this section, if a licensee holds a mortgage banker or mortgage servicer license; and

(D) Certify that the licensee shall continue to meet the qualifications under this section.

(3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension of a license under § 23-39-514 are applicable to the person seeking to acquire control of a license.

(4)(A) Failure to notify the commissioner at least thirty (30) days before the proposed change of control shall result in a late fee of one hundred dollars (\$100).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(m)(1) An application filed with the commissioner may be withdrawn upon written request of the applicant delivered to the commissioner at any time before the granting of the license.

(2) However, if a notice of intent to deny the application has been sent to the applicant, the applicant shall not withdraw the application except upon the written direction of the commissioner.

(n)(1) Unless a proceeding has been commenced to suspend or revoke the license, a license may be surrendered by a licensee by filing a written request to surrender the license in a form acceptable to the commissioner.

(2) The surrender of the license becomes effective upon acceptance by the commissioner.

(3) Notwithstanding a surrender or termination of a license and acceptance of the surrender or termination by the commissioner, if a licensee or any person acting on behalf of the licensee has knowingly violated any provision of this subchapter or any rule or order promulgated or issued under this subchapter:

(A) A proceeding may be commenced at any time within one (1) year following the effective date of the surrender or termination of the license; and

(B) An order may be entered revoking the license as of a date before the acceptance of the surrender or termination of the license.

(o) To issue a loan officer license, the commissioner shall find that:

(1) The applicant has:

(A) Never had a loan officer license revoked in a governmental jurisdiction;

(B) Not been found guilty of or pleaded guilty or nolo contendere to any offense described in § 23-39-514(a)(2)(C);

(C) Demonstrated sufficient financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the loan officer will operate honestly, fairly, and efficiently within the purposes of this subchapter; and

(D) Complied with the prelicensing education and testing requirements of subdivision (b)(3) of this section; and

(2) The applicant's employer has met the surety bond requirement of subdivision (f)(1) of this section.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 4; 2009, No. 164, § 10; 2009, No. 731, §§ 7 – 17; 2011, No. 894, §§ 5 – 8.

A.C.R.C. Notes. Pursuant to Acts 2009, No. 164, § 21, the amendment of § 23-39-505(g) by Acts 2009, No. 164, § 10, is superseded by the amendment of § 23-39-505(g) by Acts 2009, No. 731, § 13.

Amendments. The 2007 amendment added (b)(2); redesignated former (b)(2) as present (b)(3); substituted “Except as provided in § 23-39-517, each” for “Each” in (e); redesignated former (g) as present (g)(1); deleted “mortgage broker” following “banker” in (g)(1); redesignated former (g)(1) through (g)(4) as present (g)(1)(A) through (g)(1)(D); substituted “fifteen (15)” for “twelve (12)” in (g)(1)(D); added (g)(2); inserted “and § 23-39-517” in (j); inserted “at least thirty (30) days before the proposed change of control” in (l)(2); added (m) and (n); and made related changes.

The 2009 amendment by No. 164 redesignated (g), and made related and minor stylistic changes.

The 2009 amendment by No. 731, in (a)(3), inserted (a)(3)(C)(ii) and redesignated the remaining text of (a)(3)(C) accordingly, inserted “and financial condition” in (a)(3)(D)(i), and rewrote (a)(3)(E); inserted (b)(4); rewrote (e); in (f), rewrote (f)(1), inserted “and loan officers employed by the licensee” in two places in (f)(2), deleted (f)(6); deleted (g)(2) and redesignated the remaining subdivisions accordingly; deleted (i)(2) and (i)(3), redesignated the remaining subdivision, and substituted “place of business” for “office”; rewrote (j); inserted (l)(4); inserted (o); and made related changes.

The 2011 amendment inserted (a)(2) and redesignated the remaining subdivisions accordingly; rewrote present (a)(4)(B); inserted “any managing principal” in (a)(4)(D)(i); substituted “that had jurisdiction over the applicant” for “to which the person is, has been, or has sought to be subject” in (a)(4)(D)(ii)(a); substituted “January 1, 2011” for “January 1, 2009” in (b)(4)(B)(i); rewrote (l)(2)(B); inserted (l)(2)(C) and redesignated the remaining subdivision accordingly; and rewrote the introductory language of (o).

23-39-506. License renewal — Termination.

(a) A licensed mortgage broker, mortgage banker, and mortgage servicer wishing to renew a license shall:

(1) File a renewal application with the Securities Commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(2) Present proof to the commissioner that the surety bond required in § 23-39-505(f)(1) is still in effect; and

(3) Pay the commissioner an annual renewal fee of three hundred fifty dollars (\$350) for the licensee's principal place of business and one hundred dollars (\$100) for each of the licensee's branch offices.

(b) The failure of a mortgage broker, mortgage banker, or mortgage servicer to timely file a renewal application shall subject the licensee to a late fee of one hundred dollars (\$100).

(c) Each licensed loan officer wishing to renew a license shall:

(1) File an application with the commissioner in the form prescribed by the commissioner between November 1 and December 31 of the calendar year;

(2) Certify that the applicant has complied with the continuing education requirements as required by rules promulgated by the commissioner; and

(3) Pay an annual renewal fee of fifty dollars (\$50.00).

(d) The failure of a loan officer to timely file a renewal application shall subject the loan officer to a late fee of fifty dollars (\$50.00).

(e)(1)(A) A late fee assessed under subsection (b) or subsection (d) of this section shall be in addition to the renewal application fee under subsection (a) or subsection (c) of this section.

(B) All or part of the late fee may be waived by the commissioner for good cause.

(2)(A) The commissioner may consider an application and a license to be abandoned and surrendered and may require the licensee to comply with the requirements for the initial issuance of a license under this subchapter in order to continue in business if the licensee:

(i) Fails to file a renewal application within fifteen (15) days after the date the renewal application is due;

(ii) Unreasonably fails to remedy any deficiency in an application within thirty (30) days following the sending of written notice to the licensee; or

(iii) Unreasonably fails to deliver additional information or documents to the commissioner within thirty (30) days following the sending of written notice to the licensee.

(B) For purposes of this subdivision (e)(2), notice shall be complete upon:

(i) Deposit in the United States mail, postage prepaid, to the address of the licensee listed in the application; or

(ii) Delivery through an automated licensing system approved by the commissioner.

(3) The commissioner shall not reissue a license for which a late fee has accrued as a result of a person's failure to timely file a renewal application unless the late fee has been paid or waived by the commissioner for good cause.

(f)(1) A mortgage banker or a mortgage servicer shall submit audited financial statements to the commissioner within ninety (90) days after the end of the mortgage banker's or mortgage servicer's fiscal year.

(2) The audited financial statements submitted to the commissioner under subdivision (f)(1) of this section shall:

(A) Reflect that the mortgage banker or mortgage servicer has a net worth of at least twenty-five thousand dollars (\$25,000); and

(B) Comply with the requirements of § 23-39-505(g)(1)-(3).

(3)(A) Failure to timely submit audited financial statements to the commissioner shall result in a late fee of two hundred fifty dollars (\$250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 5; 2009, No. 731, § 18; 2011, No. 894, §§ 9 – 10.

Amendments. The 2007 amendment substituted “Except as provided in § 23-39-517, each” for “Each” in (a); redesignated former (a)(1) and (a)(2)(A) as present (a)(1)(A) and (a)(1)(B); in (a)(1)(B), substituted “A mortgage banker or a mortgage servicer shall also submit” for “Submit” and substituted “mortgage banker’s or mortgage servicer’s” for “licensee’s”; substituted “mortgage banker or mortgage servicer” for “applicant” in (a)(1)(B)(i); rewrote (a)(1)(B)(ii); redesignated former (a)(1)(B) as present (a)(1)(C) and redesignated the remaining subsections accordingly; rewrote (a)(1)(C); substituted “Except as provided in § 23-39-517, each” for “Each” in (c); added (c)(2); redesignated former (e)(2) as present

(e)(2)(A); rewrote (e)(2); and made related changes.

The 2009 amendment rewrote (a); substituted “one hundred dollars (\$100)” for “twenty-five dollars (\$25.00) for each day, up to a maximum of sixty (60) days, that the renewal application is late” in (b); in (c), deleted “Except as provided in § 23039-517” in the introductory language and substituted “between November 1 and December 1 of the calendar year” for “no later than sixty (60) days prior to the expiration date of the license” in (c)(1); subdivided (e); substituted “fifteen (15)” for “sixty (60)” in (e)(2)(A)(i), inserted (e)(2)(B)(ii) and redesignated accordingly; added (f); and made related and minor stylistic changes.

The 2011 amendment deleted former (a)(2) and redesignated the remaining subdivisions accordingly; and substituted “December 31” for “December 1” in (c)(1).

23-39-507. Continuing education.

(a) In addition to the other licensing requirements under this subchapter, the Securities Commissioner may adopt rules to require continuing education of licensees under this subchapter for the purpose of enhancing the professional competence and professional responsibility of mortgage bankers, mortgage brokers, mortgage servicers, and loan officers and may condition the renewal of a license upon compliance with the commissioner’s rules.

(b) The rules under subsection (a) of this section may include criteria for:

- (1) The content of continuing education courses;
- (2) Accreditation of continuing education sponsors and programs;
- (3) Accreditation of videotape or other audiovisual programs;
- (4) Computation of credit;
- (5) Special cases and exemptions;
- (6) General compliance procedures; and
- (7) Sanctions for noncompliance with the continuing education requirements.

(c) Annual continuing professional education requirements shall be determined by the commissioner but shall not exceed eight (8) credit hours within a one-year period.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1.

23-39-508. Managing principals and branch managers.

(a)(1) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a managing principal who operates the business under that person's full charge, control, and supervision.

(2) The managing principal shall:

(A) Have at least three (3) years of experience in mortgage lending; or

(B) Meet the experience and competency requirements prescribed by rule or order of the Securities Commissioner.

(b) Any individual licensee who operates as a sole proprietorship shall be considered a managing principal for the purposes of this subchapter.

(c) The managing principal for a licensee may also serve as the branch manager of one (1) or more of the licensee's branch offices.

(d)(1) Each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall have a designated branch manager who is in charge of and who is responsible for the business operations of a branch office.

(2) Each branch manager of a mortgage broker or mortgage banker must be licensed as a loan officer.

(e) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall file a form as prescribed by the Securities Commissioner indicating the licensee's designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility as managing principal or branch manager.

(f) Each mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall notify the commissioner within thirty (30) days of any change in its managing principal or branch manager designated for each branch.

(g)(1) A mortgage broker, mortgage banker, or mortgage servicer that does not comply with this section shall pay a late fee of two hundred fifty dollars (\$250).

(2) All or part of the late fee may be waived by the commissioner for good cause.

(3) The commissioner may revoke or suspend the license of any mortgage broker, mortgage banker, or mortgage servicer who fails to pay any late fee assessed under subdivision (g)(1) of this section.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 6; 2009, No. 731, § 19.

redesignated former (a) as present (a)(1) and added (a)(2).

The 2009 amendment substituted "of two hundred fifty dollars (\$250)" for

Amendments. The 2007 amendment

“equal to ten dollars (\$10.00) for each day that he or she fails to notify the commissioner of the violation, not to exceed six hundred dollars (\$600)” in (g)(1), and made minor stylistic changes in (g)(2) and (g)(3).

23-39-509. Offices — Address changes — Location of records.

(a) A mortgage broker, mortgage banker, and mortgage servicer shall maintain a principal place of business.

(b) A mortgage broker, mortgage banker, and mortgage servicer shall identify the location in which the licensee’s books, records, and files pertaining to mortgage loan transactions are maintained.

(c) The Securities Commissioner by rule may impose terms and conditions under which the records and files shall be maintained, including if the records must be maintained in this state.

(d) A principal place of business or branch office from which a mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan activity or business shall be a physical address. Mortgage loan activity or business includes without limitation the address appearing on business cards, stationery, promotional materials, or advertising.

(e)(1) A mortgage banker, mortgage broker, or mortgage servicer shall report a change of address of the principal place of business, a branch office, or a location in which the files pertaining to mortgage loan transactions are maintained within thirty (30) days after the change.

(2)(A) A licensee that does not comply with subdivision (e)(1) of this section shall pay a late fee of two hundred fifty dollars (\$250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(3) The commissioner may revoke or suspend the license of a mortgage broker, mortgage banker, or mortgage servicer who fails to pay a late fee assessed under subdivision (e)(2) of this section.

(f) A mortgage broker, mortgage banker, or mortgage servicer that ceases to do business in this state shall:

(1) Notify the commissioner within thirty (30) days after the mortgage broker, mortgage banker, or mortgage servicer ceases to do business in this state that the mortgage broker, mortgage banker, or mortgage servicer has ceased to do business in this state; and

(2) Provide the commissioner the address where all records pertaining to loans made or serviced in this state will be maintained for the period of time required by this subchapter or rule of the commissioner.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 7; 2009, No. 731, § 20; 2011, No. 894, § 11.

Amendments. The 2007 amendment added (e).

The 2009 amendment substituted “of two hundred fifty dollars (\$250)” for “equal to ten dollars (\$10.00) for each day

that he or she fails to notify the commissioner, up to a maximum of six hundred dollars (\$600)” in (d)(2)(A), and made minor stylistic changes in (d)(2)(B).

The 2011 amendment substituted “the licensee’s books” for “all of the books” in (b); deleted “relating to borrowers in Arkansas” following “loan transactions” in

(b) and present (e)(1); and inserted present (d) and redesignated the remaining subsections accordingly.

23-39-510. Licensee duties.

(a) In addition to duties imposed by other statutory or common law, a person required to be licensed under this subchapter shall:

(1) Safeguard and account for any money received for, from, or on behalf of the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Make reasonable efforts with lenders with whom a mortgage broker regularly does business to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders;

(5) Include the full name, address, and telephone number of the licensee in all solicitations and advertisements; and

(6)(A) Provide the Securities Commissioner with a quarterly report of mortgage activity.

(B) The commissioner may designate by rule or order the information to be provided in the quarterly report.

(b) The unique identifier of a person soliciting or originating a mortgage loan shall be clearly shown on all mortgage loan application forms, solicitations, advertisements, business cards, websites, and any other document or medium established by rule or order of the commissioner.

History. Acts 2003, No. 554, § 1; 2009, No. 731, § 21; 2011, No. 894, § 12.

Amendments. The 2009 amendment added (b), redesignated the introductory language as (a), inserted (a)(5), and made related changes.

The 2011 amendment inserted “mortgage” preceding “broker” in (a)(4); inserted (a)(6); and substituted “commissioner” for “Securities Commissioner” in (b).

23-39-511. Records — Escrow funds or trust accounts.

(a) The Securities Commissioner shall keep a list of all applicants for licensure under this subchapter that includes:

(1) The applicant’s name;

(2) The date of application;

(3) The applicant’s place of residence; and

(4) Whether the license was granted or refused.

(b)(1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers.

(2) The roster under subdivision (b)(1) of this section shall:

(A) Be kept on file in the office of the commissioner;

(B) Contain information regarding all orders or other actions taken against the licensees, loan officers, and other persons; and

(C) Be open to public inspection.

(c) Every licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed in rules adopted by the commissioner.

(d)(1) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place.

(2)(A) Any licensee that does not comply with subdivision (d)(1) of this section shall pay a late fee of two hundred fifty dollars (\$250).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(e)(1) A licensee shall maintain in a segregated escrow fund or trust account any funds that come into the licensee's possession but that are not the licensee's property and which the licensee is not entitled to retain under the circumstances.

(2) The escrow fund or trust account under subdivision (e)(1) of this section shall be held on deposit in a federally insured financial institution.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 2; 2009, No. 731, § 22.

Amendments. The 2009 amendment substituted "two hundred fifty dollars (\$250)" for "ten dollars (\$10.00) for each

day that he or she fails to file a correcting amendment, up to a maximum of six hundred dollars (\$600)" in (d)(2)(A), and made minor stylistic changes in (d)(2)(B).

23-39-512. Public inspection of records — Exceptions.

(a)(1) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any application or report may be made available to the public under any rules the commissioner prescribes that are consistent with state or federal law governing the disclosure of public information.

(b) Except for reasonably segregable portions of information and records that by law would be made routinely available to a party in litigation with the commissioner, the commissioner shall not publish or make available the following information:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;

(2) Interagency or intra-agency memoranda or letters, including:

(A) Generally, records that reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff; and

(B) Specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner;

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:

(A) Information concerning all employees of the State Securities Department and information concerning persons subject to regulation by the department; and

(B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, or loan officers reported to the commissioner under the department's rules concerning registration of those persons;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) Disclose the identity of a confidential source.

(B) The commissioner may also withhold investigatory records that would:

(i) Constitute an unwarranted invasion of personal privacy;

(ii) Disclose investigative techniques and procedures; or

(iii) Endanger the life or physical safety of law enforcement personnel.

(C) Investigatory records under this section include:

(i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violations by any person of any provision of any of the statutes, rules, or regulations administered by the commissioner; and

(ii) All written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions or mortgage lenders;

(6)(A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, or loan officers obtained during or as a result of an examination by the department.

(B) However, when a record under this subchapter is required to be filed with the commissioner as part of an application for license,

annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked “confidential” by the mortgage banker, mortgage broker, mortgage servicer, or loan officer upon its submission.

(C) Information under subdivision (6)(B) of this section bound separately and marked “confidential” shall be considered nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, or loan officer notice that an order will be entered declaring the material public.

(D) If the mortgage banker, mortgage broker, mortgage servicer, or loan officer believes the commissioner’s order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, or loan officer may seek an injunction from the Pulaski County Circuit Court ordering the department to hold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;

(7) Trade secrets obtained from any person; or

(8) Any other records that are required to be closed to the public and are not considered open to public inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.

(c) This section does not prevent the commissioner from sharing with other state or federal law enforcement authorities, regulatory authorities, or self-regulatory organizations authorized by law any information that the commissioner may have or may obtain in aid of the enforcement of this subchapter or any other state or federal law.

(d)(1) Except as otherwise provided in this subchapter, the requirements of any federal or state law regarding privacy or confidentiality of any information or material provided to an automated licensing system under this subchapter and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the automated licensing system.

(2) The information or material provided to an automated licensing system under this subchapter may be shared with a state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

History. Acts 2003, No. 554, § 1; 2009, No. 731, §§ 23, 24.

Amendments. The 2009 amendment, in (b), deleted “other than an agency” following “party” in the introductory language, subdivided (b)(2), and deleted “ex-

cept those that by law would routinely be made to a party other than an agency in litigation with the commissioner” at the end of (b)(2)(B); added (c) and (d); and made related and minor stylistic changes.

23-39-513. Prohibited activities.

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502(9)(B)(vi) in the course of any mortgage loan transaction or activity:

(1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise;

(2) To improperly refuse to issue a satisfaction or release of a mortgage;

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker, mortgage servicer, or loan officer is not entitled to retain;

(4) To pay, receive, or collect, in whole or in part, any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;

(5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;

(6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;

(7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that:

(A) Is not in good faith or fair dealing;

(B) Is misleading or deceptive; or

(C) Constitutes a fraud upon any person;

(8)(A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six-month period immediately following the date on which the loan was made.

(B) A penalty for prepayment under subdivision (8)(A) of this section made within the thirty-six-month period shall not exceed any of the following amounts:

(i) Three percent (3%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;

(ii) Two percent (2%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or

(iii) One percent (1%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the third twelve-month period immediately following the date the loan was made;

(9)(A) To influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

(B) This subdivision (9) does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one (1) or more of the following:

(i) Consider additional appropriate property information;

(ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) Correct errors in the appraisal report;

(10) To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;

(11) To broker, make, or service a mortgage loan in violation of any federal law or any law of this state;

(12) To engage in practices that are dishonest or unethical in the mortgage industry;

(13) To unreasonably fail to deliver or provide information or documents promptly to the commissioner upon written request or to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information; or

(14) To unreasonably fail to supervise the branches, loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer.

History. Acts 2003, No. 554, § 1; 2003 (2nd Ex. Sess.), No. 26, § 2; 2005, No. 1679, § 3; 2007, No. 748, § 8; 2009, No. 164, § 11; 2009, No. 731, § 25; 2011, No. 720, § 1; 2011, No. 894, §§ 13 – 15.

Amendments. The 2007 amendment substituted “§ 23-39-502(9)(B)(vii)” for “§ 23-39-502(6)(B)(vii)” in the introductory paragraph; added (13) and (14); and made related changes.

The 2009 amendment by No. 164 redesignated (8)(B)(i), inserted “Any of the following amounts,” and made related changes.

The 2009 amendment by No. 731 inserted “or to knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records, or other information” in (13).

The 2011 amendment substituted “§ 23-39-502(9)(B)(vi)” for “§ 23-39-502(9)(B)(vii)” in the introductory language; in (8)(B), deleted “the greater of” following “exceed” in the introductory language, deleted former (8)(B)(i) and (8)(B)(ii), and redesignated the remaining subdivisions accordingly; and inserted “or service” in (11).

23-39-514. Disciplinary authority.

(a) The Securities Commissioner by order may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee if the commissioner finds that:

(1) The order is in the public interest; and

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

(A) Has filed an application for a license that as of its effective date or as of any date after filing contained any omission or statement that in light of the circumstances under which it was made is false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806;

(C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:

(i) A felony;

(ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) An offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner:

(i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or

(ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;

(F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;

(G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;

(H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;

(I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer who has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or

(J)(i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.

(ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.

(b)(1) The commissioner by order may impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.

(2) The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, or loan officer.

(c)(1) The commissioner by order may summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.

(2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.

(3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.

(4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing, unless the hearing is postponed for a reasonable amount of time at the request of the licensee.

(5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(6) If a hearing is requested or ordered by the commissioner, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.

(d) The commissioner by order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:

- (1) Is no longer in existence;
- (2) Has ceased to do business as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;
- (3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or
- (4) Cannot be located after a reasonable search.

(e)(1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.

(2)(A) Upon entering the order under subdivision (e)(1) of this section, the commissioner shall promptly notify the person that the order has been entered and state the reasons for the order.

(B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the person by first class mail, postage prepaid.

(C) The commissioner shall schedule a hearing to be held within a reasonable amount of time after the commissioner receives a timely written request for a hearing.

(D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.

(3)(A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the commissioner's cease and desist order committed after entry of the order if:

(i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 or if the person appeals and the appeal is denied or dismissed; and

(ii) The person continues to engage in the prohibited action in violation of the commissioner's order.

(B) The commissioner may file an action requesting the civil penalty under subdivision (e)(3)(A) of this section with the Pulaski County Circuit Court or any other court of competent jurisdiction.

(C) The penalties of this section apply in addition to, but not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.

(f) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee, at any time, may inves-

tigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.

(h)(1) The commissioner or the commissioner's designee may:

(A) Administer oaths and affirmations;

(B) Issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the commissioner deems relevant to the person's business; and

(C) Issue subpoenas to require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(2)(A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may issue an order requiring the person to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.

(B) Failure to obey the order of the court may be punished by the court as a contempt of court.

(3)(A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:

(i) Attending and testifying;

(ii) Producing any document or record; or

(iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner.

(B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

(i)(1) From time to time and with or without cause, the commissioner may conduct examinations of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.

(2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty dollars (\$150) per examiner for each day or part of a day during which any examiners are absent from the office of the commissioner for the purpose of conducting the examination.

(3) In addition, the applicant or licensee may be required to pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (i)(1) of this section.

(j) If the commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of, or reasonably

should have had knowledge of, or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, or loan officer from serving as a managing principal, branch manager, or loan officer for any period of time the commissioner deems appropriate.

(k) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (e)(1) of this section, before entering an order under this section, the commissioner shall provide:

(1) Prior notice to the licensee or person who is the subject of the order; and

(2) An opportunity for hearing.

(l) This section does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

(m)(1) If it appears upon sufficient grounds or evidence satisfactory to the commissioner that any person or licensee has engaged in or is about to engage in any act or practice that violates this subchapter or any rule or regulation adopted or order issued under this subchapter or that the assets or capital of any licensee are impaired or the licensee's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, that with or without the reference may institute the appropriate criminal or regulatory proceedings under this subchapter; and

(B)(i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (e)(1) of this section and apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order issued under this subchapter, or both.

(ii) However, without issuing a cease and desist order, the commissioner may apply directly to the Pulaski County Circuit Court for injunctive or other relief.

(2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

(3) The commissioner may also seek and upon proper showing the appropriate court shall grant any other ancillary relief that may be in the public interest, including:

(A) The appointment of a receiver, temporary receiver, or conservator;

(B) A declaratory judgment;

(C) An accounting;

(D) Disgorgement;

(E) Assessment of a fine in an amount of not more than ten thousand dollars (\$10,000) for each violation; and

(F) Any other relief as may be appropriate in the public interest.

(4) The court may not require the commissioner to post a bond.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 4; 2007, No. 748, §§ 9, 10; 2009, No. 731, §§ 26, 27; 2011, No. 894, § 16.

Amendments. The 2007 amendment added “unless the hearing is postponed for a reasonable amount of time at the request of the licensee” and made a related change in (c)(4); substituted “person” for “licensee” in (d)(2)(B); and substituted “a reasonable amount of time” for “thirty (30) days” in (d)(2)(C).

The 2009 amendment, in (a)(2)(C), inserted “in a domestic, foreign, or military court” in the introductory language, and

inserted “money laundering” in (a)(2)(C)(ii); substituted “Issue subpoenas to require” for “Require” in (g)(1)(C); and made related and minor stylistic changes.

The 2011 amendment inserted “restricting, or limiting” in (a)(2)(E)(i); inserted present (d) and redesignated the remaining subsections accordingly; and substituted “may be required to pay” for “shall pay” in present (i)(3).

Meaning of “this act”. Acts 1977, No. 806, codified as §§ 23-39-101 — 23-39-105 [repealed], 23-39-201 — 23-39-206 [repealed], 23-39-301 — 23-39-309 [repealed], 23-42-102, 23-42-301.

23-39-515. Review of order of the commissioner.

(a)(1) Any person aggrieved by a final order of the Securities Commissioner may obtain a review of the order by filing in the Pulaski County Circuit Court within sixty (60) days after the entry of the order a written petition praying that the order be modified or set aside in whole or in part.

(2)(A) A copy of the petition shall be served upon the commissioner, after which the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered.

(B) When a petition under subdivision (a)(1) of this section has been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside any order of the commissioner in whole or in part, except that a court may not set aside a summary order entered by the commissioner when the subject of the order has not requested a hearing before the commissioner as provided in § 23-39-514(c)(1) or (d)(1).

(b)(1) The findings of the commissioner as to the facts are conclusive if supported by competent, material, and substantial evidence.

(2) If either party applies to the court for leave to submit additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to submit the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be submitted upon the hearing before the commissioner in any manner and upon any condition as the court considers to be proper.

(3) After consideration of the additional evidence, the commissioner may modify his or her findings and order and shall file in the court the additional evidence together with any modified or new findings or order.

(c) Unless specifically ordered by the court, the commencement of proceedings under subsection (a) of this section does not operate as a stay of the commissioner’s order.

History. Acts 2003, No. 554, § 1.

23-39-516. Criminal penalty.

- (a) It is unlawful for any person to make or cause to be made in any document filed with the Securities Commissioner or in any proceeding under this subchapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.
- (b)(1) A person is guilty of a Class B felony if he or she:
 - (A) Willfully violates any provision of this subchapter, except subsection (a) of this section;
 - (B) Willfully violates subsection (a) of this section knowing the statement to be false or misleading in any material respect; or
 - (C) Willfully violates any rule under this subchapter or any order of the commissioner.
- (2) Each transaction involving the unlawful making or brokering of a mortgage loan is a separate offense.
- (c) No person may be imprisoned for violation of any order of the commissioner unless the person had actual knowledge of the order.
- (d) The commissioner may refer any available evidence concerning violations of this subchapter or any rule or order issued under this subchapter to the appropriate prosecuting authority who, with or without the reference, may institute the appropriate criminal proceedings under this subchapter.
- (e) This subchapter does not limit the power of the state to punish any person for any conduct that constitutes a crime under any statute or common law.

History. Acts 2003, No. 554, § 1.

23-39-517. [Repealed.]

Publisher’s Notes. This section, concerning transition, was repealed by Acts

2011, No. 894, § 17. The section was derived from Acts 2007, No. 748, § 11.

23-39-518. Cooperation with other regulatory agencies.

- (a) The Securities Commissioner may:
 - (1) Enter into an arrangement, agreement, or other working relationship with federal, state, or self-regulatory authorities, the Conference of State Bank Supervisors, or a subsidiary of the Conference of State Bank Supervisors to file and maintain documents in a multistate automated licensing system or other central depository system;
 - (2) Waive or modify in whole or in part by rule or by order any requirement of this subchapter if necessary to implement this section; and
 - (3) Establish new requirements under this subchapter to carry out the purpose of this section.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with other states and federal authorities.

(c)(1) The commissioner may permit or require initial and renewal registration filings required under this subchapter to be filed with the Conference of State Bank Supervisors, a subsidiary entity owned by the Conference of State Bank Supervisors, the Financial Industry Regulatory Authority, or another entity maintaining or operating a multistate automated licensing system.

(2) The applicant or the licensee shall pay any fee charged for the applicant or the licensee to participate in the automated licensing system.

(d) The commissioner may accept uniform procedures and forms designed to:

- (1) Implement a multistate automated licensing system;
- (2) Implement a uniform national mortgage lending regulatory system; or
- (3) Facilitate common practices and procedures among the states.

(e)(1) If the State of Arkansas joins a multistate automated licensing system for mortgage industry participants pursuant to this section, the commissioner may require a criminal background investigation of each applicant seeking to become licensed under this subchapter as a mortgage broker, mortgage banker, mortgage servicer, or loan officer.

(2) The criminal background investigation may include a fingerprint examination and may be conducted by the Federal Bureau of Investigation, the Department of Arkansas State Police, or an equivalent state or federal law enforcement department or agency.

(3) The information obtained by the background investigation may be used by the commissioner to determine the applicant's eligibility for licensing under this subchapter.

(4) The fee required to perform the criminal background investigation shall be borne by the license applicant.

(5) Notwithstanding any other law to the contrary, information obtained or held by the commissioner under this subsection:

(A) May be disclosed when necessary in any proceeding under this subchapter;

(B) May be provided to other state agencies participating in the multistate automatic licensing system;

(C) Shall be considered privileged and confidential; and

(D) Shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(6) No record, file, or document shall be removed from the custody of the Identification Bureau of the Department of Arkansas State Police.

(7) Any information made available to the affected applicant for licensure or to the person whose license is subject to sanctions shall be information pertaining to that person only.

(8) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(9) The commissioner may adopt rules and regulations to fully implement the provisions of this section.

History. Acts 2007, No. 748, § 11; 2009, No. 731, § 28.

Amendments. The 2009 amendment

substituted "Financial Industry Regulatory Authority" for "National Association of Securities Dealers" in (c)(1).

CHAPTER 40

ARKANSAS PREPAID FUNERAL BENEFITS LAW

SECTION.

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SECTION.

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- 23-40-122. Cancellation.
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- 23-40-124. Compliance.
- 23-40-125. Prepaid Funeral Contracts Recovery Program Fund — Created — Prepaid Funeral Contracts Recovery Program Board — Established.
- 23-40-126. Unfair competition or unfair or deceptive acts or practices prohibited — Penalties.

Effective Dates. Acts 1985, No. 888, § 26: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that the amendments to Revenue Stabilization Law are essential to the continued operation of State government; therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1985. Provided, however, that Sections 18, 20 and 21 of this Act shall become effective from

and after the passage and approval of this Act."

Acts 1995, No. 852, § 16: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the responsibility for the regulation of the sale of prepaid funeral benefits should be transferred from the Arkansas Securities Commissioner and Arkansas Securities Department to the Arkansas Insurance Commissioner; that the orderly transfer of such responsibilities can be best accomplished by causing such transfer to take effect at the begin-

ning of the next fiscal year in order to comport with the appropriations for the next fiscal year for the Arkansas Securities Department and Arkansas Insurance Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 372, § 15: Mar. 16, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 23-40-116 requires all organizations which sell contracts for prepaid funeral benefits to file annual reports and submit annual report fees on or before March 15th of each year; that this act modifies the annual report fee schedule and should therefore become effective on March 16, 1997; and unless this emergency clause is adopted the provisions of this act will not become effective until several months after March 16, 1997. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective March 16, 1997."

Acts 1999, No. 881, § 28: Mar. 25, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly of the State of Arkansas that the present funeral preneed laws, employee leasing firm laws, and other insurance laws are inadequate to protect the public. In pertinent part, the changes to the Insurance Code needed to assure the stability of funding for the Fraud Investigation Division of the Department must be enacted in the laws of this state well before the new fiscal year beginning July 1, 1999. The changes to authorized appropriations, as well as changes to the disability (health) insurance laws on individuals to conform to the federal laws on group policies with guaranteed renewability require immediate adoption; and unless this emergency clause is adopted, this act might not become effective until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and

approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1043, § 8: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the regular session, the delay in the effective date of this act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

CASE NOTES

Constitutionality.

Former similar act which was enacted for the prevention of fraud was not an unwarranted and unlawful exercise of the police power. *Reserve Vault Corp. v. Jones*, 234 Ark. 1011, 356 S.W.2d 225 (1962) (decision under prior law).

Former act governing prepaid funeral expenses was not an unconstitutional impairment of contract between vault company and its salesmen for commissions earned prior to its passage, as such prohibitions did not prevent a proper exercise by the state of its police power under Ark.

Const., Art. 2, § 17 and U.S. Const., Art. 1, § 10. *Reserve Vault Corp. v. Jones*, 234 Ark. 1011, 356 S.W.2d 225 (1962) (decision under prior law).

Where former similar act bore on its face clear indication that it was designed to prevent fraud, the fact that there was no charge of fraud against present ownership of company selling funeral vaults on a prepayment plan has no bearing on determining its constitutionality. *Reserve Vault Corp. v. Jones*, 234 Ark. 1011, 356 S.W.2d 225 (1962) (decision under prior law).

23-40-101. Short title.

This chapter shall be known as the “Arkansas Prepaid Funeral Benefits Law”.

History. Acts 1995, No. 852, § 12.

A.C.R.C. Notes. Former § 23-40-101

has been renumbered as § 23-40-103 by the Arkansas Code Revision Commission.

23-40-102. Purpose.

The purpose of this chapter is to provide for the regulation of the sale of prepaid funeral benefits by the Insurance Commissioner.

History. Acts 1995, No. 852, § 12.

A.C.R.C. Notes. Former § 23-40-102 has been renumbered as § 23-40-104.

As enacted, this section provided an effective date of July 1, 1995, and ended: “and to amend various provisions of Ark. Code Ann. 23-40-101 et seq. All the responsibilities of the State Securities Commissioner and Arkansas Securities Department for the regulation of the sale of prepaid funeral benefits shall cease and such responsibilities shall be assumed by the State Insurance Commissioner. On

July 1, 1995 all records, books, files, reports, documents, moneys and all things pertaining to the regulation of prepaid funeral benefits shall be transferred to the State Insurance Commissioner. All forms for the sale of prepaid funeral benefits, all trust agreements and arrangements and all documents presently in use which have been previously approved by the Securities Commissioner shall continue to be approved until otherwise determined by the Insurance Commissioner pursuant to a proper rule or order.”

23-40-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Cash accommodation items" means flowers, honorariums, death certificates, sales taxes, grave opening and closing, cemetery charges, and other items incidental to the funeral and disposition of the beneficiary which are to be furnished or provided by a third party at the time of death;

(2) "Contract beneficiary" means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be performed, provided, or delivered;

(3) "Contract price" means the aggregate moneys to be paid and the aggregate stated value of all other direct or indirect consideration to be assigned by purchasers of prepaid funeral benefits as provided in the contract, exclusive of any finance charge;

(4) "Contract proceeds" means the portion of the contract price collected by the seller from a contract for the sale of prepaid funeral benefits;

(5) "Licensee" or "permittee" means a person holding a valid permit or license issued pursuant to this chapter;

(6) "Liquid investments" means investments which can be sold at cost or greater, liquidated without penalty, and collected within five (5) banking days;

(7) "Net investment income" means:

(A) All revenue and earnings of the trust fund, including, but not limited to, interest, dividends, and capital gains; minus

(B) Investment expenses, trustee's fees, capital losses, and all revenue and earnings on cash accommodation funds;

(8) "Net worth" means the difference between the applicant's total assets and total liabilities as reflected in a balance sheet prepared in accordance with accounting principles and procedures approved by the Insurance Commissioner;

(9)(A) "Prearrangement" means an arrangement whereby a person, for himself or herself or on behalf of some other person, makes arrangement for funeral and burial services prior to the death of the person, without consideration and without an agreement or itemization specifying any particular service or merchandise, or the cost thereof, through the assignment or transfer, including the conditions that the assignor or transferor may choose to impose, of ownership to a licensee of an insurance policy or annuity contract, or proceeds thereof, or by the designation of a licensee as beneficiary of any such insurance policy or annuity contract.

(B) An assignment of an insurance policy or annuity or the proceeds thereof to a funeral home or the designation of a funeral home as beneficiary as described in subdivision (9)(A) of this section is not a prepaid funeral benefits contract;

(10) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of

funeral services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed-upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary. It does not include a prearrangement;

(11) “Seller” means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits pursuant to this chapter;

(12) “Surplus” means the funds or other property in excess of the undistributed net investment income and aggregate contract proceeds held in the trust fund; and

(13) “Trustee” means a state or national bank or savings and loan association in this state, or, in the reasonable discretion of the Insurance Commissioner upon the terms and conditions that he or she may require, a securities brokerage firm licensed and in good standing with appropriate state and federal regulatory authorities.

History. Acts 1985, No. 156, § 1; A.S.A. 1947, § 67-1713; Acts 1995, No. 852, § 1; 1997, No. 372, §§ 1-3. Formerly codified as § 23-40-101. Former § 23-40-103 has been renumbered as § 23-40-105.

A.C.R.C. Notes. This section was for-

23-40-104. Arkansas Insurance Code not affected.

Nothing in this chapter shall apply to any licensed insurance company or alter or affect any provisions of the Arkansas Insurance Code.

History. Acts 1985, No. 156, § 15; A.S.A. 1947, § 67-1727; Acts 1995, No. 852, § 1. § 23-40-106.

A.C.R.C. Notes. This section was formerly codified as § 23-40-102. Former § 23-40-104 has been renumbered as § 23-40-106.

Publisher's Notes. The Arkansas Insurance Code, referred to in this section, was originally enacted by Acts 1959, No. 148. Acts 1959, No. 148 is codified as set out in the note following § 23-60-101.

23-40-105. Burial associations exempted.

Nothing in this chapter shall apply to organizations or associations operating in this state as burial associations pursuant to § 23-78-101 et seq.

History. Acts 1985, No. 156, § 3; A.S.A. 1947, § 67-1715; Acts 1995, No. 852, § 1. Formerly codified as § 23-40-103. Former § 23-40-105 has been renumbered as § 23-40-108.

A.C.R.C. Notes. This section was for-

§ 23-40-108.

23-40-106. Violations — Penalties.

(a)(1) Any officer, director, agent, or employee of any organization subject to the terms of this chapter who makes, or attempts to make, any contract in violation of this chapter, or refuses to allow an inspection of the organization's records shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for

not fewer than six (6) months and not more than twelve (12) months, or by both fine and imprisonment.

(2) Any officer, director, agent, or employee of any organization who collects contract proceeds on cash-funded prepaid funeral contracts and fails to deposit such funds with a trustee as required under § 23-40-114 shall be guilty of a Class D felony. A person convicted of a violation of § 23-40-114 shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment.

(b) Each violation of any provision of this chapter shall be deemed a separate offense and prosecuted individually.

(c) The Criminal Investigation Division shall have jurisdiction to investigate and prosecute any officer, director, agent, or employee of any organization who collects contract proceeds on cash-funded prepaid funeral contracts and fails to deposit such funds with a trustee as required under § 23-40-114.

History. Acts 1985, No. 156, § 13; A.S.A. 1947, § 67-1725; Acts 1999, No. 1249, § 3; 2001, No. 1043, § 1. **A.C.R.C. Notes.** This section was formerly codified as § 23-40-104.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-40-107. Division of Prepaid Funeral Benefits — State Insurance Department Prepaid Trust Fund.

(a) The Insurance Commissioner shall be responsible for the regulation of the sale of prepaid funeral benefits, and there is hereby established the Division of Prepaid Funeral Benefits within the State Insurance Department. This division shall be funded annually by the fees required to be paid by organizations subject to this chapter, which shall be placed in trust and disbursed pursuant to this chapter.

(b) There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "State Insurance Department Prepaid Trust Fund" to be used to pay the expenses of the State Insurance Department in the discharge of its regulation of prepaid funeral benefits contracts.

(c) No money shall be appropriated from this fund for any purpose other than to pay for personal services, operating expenses, maintenance and operations, and support of and improvements to the division, except as provided in § 23-40-119(f).

(d) The fund established pursuant to this section shall be administered, disbursed, and invested under the direction of the commissioner and the Treasurer of State.

(e) All income derived through the investment of the fund, including, but not limited to, interest and dividends, shall be credited as investment income to the fund.

(f) All income derived through grants, refunds, and gifts to the fund shall be credited as income to the fund.

(g) All moneys deposited to the fund shall not be subject to any deduction, tax, levy, or any other type of assessment, except as provided in this chapter.

(h) All fees required to be paid by licensees pursuant to this chapter shall be deposited into the fund for the support, operation, and maintenance of the division and, when paid into the State Treasury by the commissioner, shall be maintained by the Treasurer of State as the State Insurance Department Prepaid Trust Fund, separate from all other funds, and available only for the payment of the expenses of the division, except as provided in § 23-40-119(f).

(i) Upon proper voucher from the commissioner, the Auditor of State shall issue his or her warrant on the Treasurer of State in payment of all salaries and other expenses incurred by the division, or for any reparations awarded under § 23-40-119(f) in the administration of this chapter.

(j) However, as needed, the commissioner shall transfer from the State Insurance Department Prepaid Trust Fund to the Prepaid Funeral Contracts Recovery Program Fund a sum or sums sufficient to administer and provide reparations to persons as provided under § 23-40-119(d)(1)(A) and (f)(1).

History. Acts 1995, No. 852, § 12; 1997, No. 372, § 4; Acts 1999, No. 1249, § 2; 2001, No. 1043, § 2. **A.C.R.C. Notes.** Former § 23-40-107 has been renumbered as § 23-40-110.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-40-108. Administration.

(a) This chapter shall be administered by the Insurance Commissioner.

(b) The commissioner is authorized to prescribe reasonable rules and regulations concerning keeping and inspection of records, the filing of contracts and reports, and all other matters incidental to the orderly administration of this chapter.

(c) The commissioner is authorized to employ the personnel necessary to carry out the provisions of this chapter and to fix their compensation within the amounts made available by appropriation.

(d) The commissioner may make and promulgate reasonable rules and regulations for the administration of this chapter and for the purpose of carrying out the intent hereof.

History. Acts 1985, No. 156, §§ 4, 14; A.S.A. 1947, §§ 67-1716, 67-1726; Acts 1995, No. 852, § 2. merly codified as § 23-40-105. Former § 23-40-108 has been renumbered as § 23-40-111.

A.C.R.C. Notes. This section was for-

CASE NOTES

Rules and Regulations.

The rule-making authority given to the Securities Commissioner under former similar section did not authorize the promulgation of a rule or regulation that

was not authorized or was contrary to the laws of this state. Arkansas Sec. Dep't v. Roller Funeral Home, 263 Ark. 123, 562 S.W.2d 611 (1978) (decision under prior law).

23-40-109. Permit required.

(a) Any individual, firm, partnership, corporation, society, association, or other entity, hereinafter called an "organization", desiring to sell prearranged or prepaid funeral services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise incidental to funeral services, in this state under a sales contract providing for prepaid disposition or funeral benefits or merchandise to be delivered at an undetermined future date depending upon the death of a contracting party, hereinafter called "prepaid funeral benefits", or any organization desiring to purchase an interest in, or assume the liability of, any contract for prepaid funeral benefits, shall obtain a permit from the Insurance Commissioner authorizing the transaction of this type of business before entering into any such agreement or contract and prior to accepting money, property, or any other direct or indirect consideration and shall first apply for and obtain a prepaid funeral benefits permit or license pursuant to the provisions of this chapter.

(b) An organization desiring to sell prepaid funeral benefits or otherwise own any interest in any contract for prepaid funeral benefits shall file proof of ownership of an establishment which is in the business of providing the funeral goods or services to be contracted for and proof that the establishment is duly authorized and licensed to do such business in the State of Arkansas.

(c) It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time the contract is made.

History. Acts 1985, No. 156, § 2; A.S.A. 1947, § 67-1714; Acts 1995, No. 852, § 3. merly codified as § 23-40-106. Former § 23-40-109 has been renumbered as § 23-40-112.

A.C.R.C. Notes. This section was for-

23-40-110. Application for initial or renewed permit.

(a) Each organization desiring to sell prepaid funeral benefits or any organization desiring to purchase an interest in or assume the liability of any contract for prepaid funeral benefits shall file an application for a permit with the Insurance Commissioner. Each initial and renewal

application for a permit shall contain such information which the commissioner by rule or regulation shall reasonably prescribe.

(b) Each applicant shall, at the time of the application, pay a filing fee of three hundred dollars (\$300) for the initial application and two hundred dollars (\$200) for a renewal application.

(c) Permits shall expire on June 1 of each year, unless a renewal application is filed with and approved by the commissioner prior to the permit expiration date. Each organization which has discontinued the sale of prepaid funeral benefits, but which still has outstanding contracts, shall obtain a renewal of its permit until all those contracts have been performed or otherwise fully discharged. No filing fee shall be prorated.

(d)(1) Each applicant for a permit pursuant to the provisions of this chapter shall, as of a date not preceding thirty (30) days of the application date, have a net worth in an amount equal to the greater of five thousand dollars (\$5,000) or three percent (3%) of the aggregate contract price of all contracts for prepaid funeral benefits outstanding and unfulfilled as of the end of the preceding calendar year, up to a maximum net worth of two hundred fifty thousand dollars (\$250,000).

(2) Each applicant shall, at the time of application, file a sworn and notarized certification of net worth form stating that the applicant satisfies the net worth requirements of this chapter, in a format as prescribed by the commissioner, as evidence that the applicant has, at a minimum, the required net worth.

History. Acts 1985, No. 156, § 5; A.S.A. 1947, § 67-1717; Acts 1995, No. 852, § 4; 1997, No. 372, § 5. merly codified as § 23-40-107. Former § 23-40-110 has been renumbered as § 23-40-113.

A.C.R.C. Notes. This section was for-

23-40-111. Issuance of permit — Cancellation or denial.

(a)(1) The Insurance Commissioner may issue a permit conditioned upon satisfactory completion of all requirements of this chapter prior to the applicant’s offering for sale or selling prepaid funeral benefits.

(2) In addition, prior to the issuance of either an initial or renewal permit, the applicant must be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.

(b)(1) The commissioner may deny an initial application for failure to meet the requirements of subsection (a) of this section or for the applicant’s failure to comply with any material provision of this chapter or any valid rule and regulation that the commissioner has prescribed, after:

(A) Thirty (30) days’ notice to the applicant or permittee setting forth the grounds for the cancellation, the denial of application for initial permit, or refusal to renew; and

(B) A hearing if the applicant or permittee requests a hearing.

(2) After notice to the licensee and after a hearing, the commissioner may suspend any permit under this chapter for up to thirty-six (36)

months or may revoke or refuse to continue any permit under this chapter if the commissioner finds that:

(A) The licensee has failed to comply with any material provision of this chapter or any valid rule and regulation or order that the commissioner has prescribed;

(B) The licensee has obtained its permit through misrepresentation or fraud;

(C) An officer, director, or owner of the licensee has improperly withheld, misappropriated, or converted any moneys or properties received in the course of prepaid funeral contracts business to the licensee's own use;

(D) An officer, director, or owner of the licensee has been found to have committed any unfair trade practice or fraud during the course of prepaid funeral contracts business;

(E) The licensee has failed to provide a written response after receipt of a written inquiry from the commissioner or his or her representative as to transactions under the license within thirty (30) days after receipt thereof unless the commissioner or his or her representative knowingly waives the timely response requirement in writing;

(F) The licensee has refused to be examined or produce any of his or her accounts, records, and files for examination or has failed to cooperate with the commissioner in an investigation when requested by the commissioner or his or her representative; or

(G) The licensee is in violation of any grounds under § 23-40-114(a) sufficient to subject the organization to delinquency proceedings.

(3)(A) If the commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the commissioner may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000) per violation.

(B) If the commissioner finds willful misconduct or willful violation on the part of the licensee, the commissioner may impose upon the licensee an administrative penalty of up to five thousand dollars (\$5,000) per violation.

(C) In addition to either penalty imposed under subdivision (b)(3)(A) or subdivision (b)(3)(B) of this section, the commissioner may also order restitution of actual losses to affected persons.

(4) If the commissioner finds in his or her order that the public health, safety, or welfare imperatively requires emergency action, the commissioner may summarily suspend any license issued by him or her but shall promptly hold an administrative hearing regarding the suspension.

(5)(A) Upon notice and hearing, if the commissioner finds that the licensee has violated a provision of the prepaid funeral benefits laws of this state or any rule, regulation, or order of the commissioner and that the licensee has previously violated provisions of the prepaid funeral benefits laws of this state or any rule, regulation, or order of the commissioner, the commissioner may:

- (i) Take judicial notice of previous orders against the licensee; and
- (ii) Enhance or increase the penalties ordered in the current proceeding against the licensee.

(B) The commissioner may enter an order under subdivision (b)(5)(A) of this section by:

- (i) The commissioner's own order; or
- (ii) An order entered with the consent of the parties.

(C) The commissioner shall incorporate a finding under subdivision (b)(5)(A) of this section in any order issued under this subdivision (b)(5).

(c) Any person aggrieved by the action of the commissioner may appeal therefrom to any state court of competent jurisdiction.

History. Acts 1985, No. 156, §§ 5, 7; A.S.A. 1947, §§ 67-1717, 67-1719; Acts 1995, No. 852, § 4; 1999, No. 347, § 1; 2003, No. 987, § 1.

A.C.R.C. Notes. This section was formerly codified as § 23-40-108. Former § 23-40-111 has been renumbered as § 23-40-114.

23-40-112. Sales contracts for prepaid funeral benefits.

(a) The Insurance Commissioner shall approve forms for sales contracts for prepaid funeral benefits.

(b) All contracts for sale of prepaid funeral benefits must be in writing and must set forth the specific merchandise and services to be provided by the seller and the contract price.

(c) All forms of sales contracts for prepaid funeral benefits shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules as prescribed by the commissioner. No contract form shall be used without prior approval of the commissioner.

(d)(1) All contracts for sale of prepaid funeral benefits shall provide that the seller shall furnish to the buyer the merchandise and services as set forth in the contract at the contract price, regardless of the cost of the merchandise or services at the date of the beneficiary's death.

(2) However, the seller shall not be required to furnish at the contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the contract as cash accommodation items. The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death. In the event the total funds on deposit shall exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his or her estate.

(e) The seller shall not be entitled to enforce a contract made in violation of this chapter, but the purchaser, or his or her heirs, or his or her legal representative shall be entitled to recover all amounts paid to the seller under any contract made in violation hereof.

(f)(1) This chapter shall not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with the provisions of this chapter or the desig-

nation of an organization licensed pursuant to the provisions of this chapter as beneficiary of a funeral expense or other insurance policy.

(2) Such an assignment, transfer, or designation shall not be deemed to be a prepaid contract.

(g) The prepaid contract shall contain a provision in substantially the following form:

NOTICE: If this contract is irrevocable and you choose to transfer this contract to a substitute provider, the entire amount of the contract will not be transferred and you may have to pay more to obtain 100% of the services provided for in the contract.

(h) Each seller shall provide advance written notice to the contract purchaser that the seller intends to procure a single payment whole life insurance policy or annuity on the contract beneficiary to fund the prepaid funeral benefit contract for less money than the total amount of the cash payment if:

(1) The prepaid funeral benefits contract was originally intended by the contract purchaser to be fully paid in cash; and

(2) The amount of the single premium payment to the insurer by the seller is less than the cash payment provided to the seller by the contract purchaser.

History. Acts 1985, No. 156, §§ 2, 4; A.S.A. 1947, §§ 67-1714, 67-1716; Acts 1995, No. 852, §§ 4, 12; 2003, No. 987, § 3[2].

A.C.R.C. Notes. This section was for-

merly codified as § 23-40-109. Former § 23-40-112 has been renumbered as § 23-40-115.

Publisher's Notes. Acts 2003, No. 987 did not contain a Section 2.

CASE NOTES

Contract Terms.

Where seller's contract provided that the purchaser or someone acting for him agreed to notify the seller immediately upon death and seller would have a specified minimum notice prior to delivery of a grave vault, delivery was conditioned upon a demand made pursuant to a death and was subject to former similar act. *Reserve Vault Corp. v. Jones*, 234 Ark. 1011, 356 S.W.2d 225 (1962) (decision under prior law).

The inclusion of "service and merchandise-only" clauses in pre-need contracts is

not void as against public policy. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 313 Ark. 128, 854 S.W.2d 312 (1993).

Amendments to §§ 23-71-111 and 23-78-112 preclude strict enforcement of "service and merchandise-only" clauses in both burial certificates and insurance policies; however, no legislative action as yet has been taken to amend subdivision (d)(1) of this section, which provides that sellers of pre-need contracts may contract to provide merchandise and services. *Guaranty Nat'l Ins. Co. v. Denver Roller, Inc.*, 313 Ark. 128, 854 S.W.2d 312 (1993).

23-40-113. Change of ownership.

(a) The seller shall apply for change of ownership or control when:

(1) The seller transfers all or a portion of the interest in any contract for prepaid funeral benefits;

(2) The seller transfers one (1) or more of its establishments for providing funeral goods or services;

(3) All or a portion of the equity ownership of a seller has been transferred which will result in a change of:

(A) The controlling interest of a seller when the seller is a corporation;

(B) Ownership of a seller when the seller is other than a corporation;

(4) The seller transfers all of its business assets relating to providing funeral goods or services; or

(5) The seller terminates its business of providing funeral goods or services.

(b) At least fifteen (15) days prior to the proposed occurrence of an event described in subsection (a) of this section, the seller shall file a verified change of ownership application with the Insurance Commissioner which shall contain the following:

(1) The name and address of the seller;

(2) The name and address of the organization proposing to acquire property of the seller, hereinafter referred to as the "transferee";

(3) A description of the property and of the proposed transaction, as set forth in subsection (a) of this section;

(4) An accounting of the trust fund and all outstanding contracts, which accounting shall contain all the information required in the annual report, prepared as of a date within thirty (30) days of the required application filing date;

(5) Any required documents or amendments thereto relating to the trust fund;

(6) A copy of any notice proposed to be sent to the contract buyers after the transfer;

(7) A filing fee of five hundred dollars (\$500); and

(8) Any other information which may reasonably be required by the commissioner pursuant to rule or order.

(c) The commissioner shall approve the seller's application for change of ownership by written authorization if:

(1) The transferee or transferees set forth in the application hold a valid, current permit pursuant to the provisions of this chapter;

(2) The accounting required is complete, accurate, and reflects the trust fund whole and intact; and

(3) All required information and documents are filed with and approved by the commissioner.

(d) The commissioner shall have the authority by rule or order to waive or reduce any or all of the requirements contained in subsection (b) of this section as not being necessary or appropriate in the public interest or for the protection of the contract buyers.

(e) The seller, or interest therein, shall remain liable for all funds and transactions to the effective date of the transfer. The commissioner shall recover from the seller, for the benefit and protection of contract buyers, all contract proceeds which the seller has not properly accounted for and deposited into the trust fund.

History. Acts 1985, No. 156, § 6; A.S.A. formerly codified as § 23-40-110. Former 1947, § 67-1718; Acts 1995, No. 852, § 5; § 23-40-113 has been renumbered as 1997, No. 372, § 6; 1999, No. 881, § 2. § 23-40-116.

A.C.R.C. Notes. This section was for-

23-40-114. Trust funds — Creation — Deposits, withdrawals, and transfers of funds.

(a) All contract proceeds collected under contracts for prepaid funeral benefits, including funds collected under contracts entered into before June 28, 1985, shall be deposited with a trustee within twenty (20) business days after receipt of proceeds, to be held, invested, and administered in a trust fund for the benefit and protection of the contract purchasers pursuant to this chapter.

(b) Each trust fund shall be created by a letter or written agreement which shall be filed with and approved by the Insurance Commissioner prior to placement of funds.

(c) The seller may deposit money or property as surplus at any time.

(d) The commissioner shall prescribe by regulation proper affidavits and forms for the withdrawal of funds from the trust fund.

(e) The commissioner shall first approve and authorize in writing any transfer of funds from an existing trustee to a proposed new trustee if the proposed new trustee meets the requirements of this chapter and the rules and regulations promulgated thereunder.

(f) The licensee shall file a request for a transfer of funds, together with a filing fee of two hundred fifty dollars (\$250), and any other information required by rule or regulation.

(g) This section shall not apply to the proceeds of insurance policies or contracts, and it shall not be necessary to establish a trust for the payment of such proceeds to the beneficiary designated in the policy or contract or the assignee or transferee thereof.

(h) Pending a promptly scheduled hearing, the commissioner or his or her authorized representative may immediately suspend or prohibit disbursements or withdrawals from the trust fund by an organization if the commissioner or his or her authorized representative determines that the organization has violated § 23-40-114(a) in a manner sufficient to subject the organization to delinquency proceedings.

History. Acts 1985, No. 156, § 8; A.S.A. formerly codified as § 23-40-111. Former 1947, § 67-1720; Acts 1995, No. 852, § 6; § 23-40-114 has been renumbered as 1997, No. 372, § 7; 2001, No. 1043, § 3; § 23-40-117. 2003, No. 987, § 4[3].

Publisher's Notes. Acts 2003, No. 987 did not contain a Section 2.

A.C.R.C. Notes. This section was for-

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

CASE NOTES

Constitutionality.

Requirement that all moneys collected be placed in a trust fund did not make former similar provision confiscatory rather than regulatory nor prohibit the

operation of this type of business. Reserve Vault Corp. v. Jones, 234 Ark. 1011, 356 S.W.2d 225 (1962) (decision under prior law).

23-40-115. Trust funds — Investments.

(a)(1) The trustees shall invest the trust fund only in the following:

(A) Demand deposits, savings accounts, certificates of deposit, and all other accounts which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation [abolished];

(B) Bonds and obligations which are insured by, fully guaranteed as to principal and interest by, and due from the United States Government or any of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations which are secured by any of the foregoing;

(C)(i) Corporate, state, municipal, or political subdivision bonds or obligations which are rated Aa or better by Moody's or AA or better by Standard & Poor's rate services; or

(ii)(a) Bonds of any school district in this state.

(b) Provided, however, no more than thirty percent (30%) of the total trust assets may be invested in such school bonds; and

(D)(1) Mutual funds or common trust funds whose portfolio is made up of investments that are described in subdivisions (a)(1)(A)-(C) of this section.

(2) Investments described in subdivisions (a)(1)(B)-(D) of this section shall be purchased and held by the trustee which has trust powers under a trust agreement filed with and approved by the Insurance Commissioner.

(b) The trustee shall maintain the trust fund in a manner consistent with the following investment policies:

(1) Not less than one hundred thousand dollars (\$100,000) of the trust fund shall be invested in investments described in subdivision (a)(1) of this section. However, if the total amount of the trust fund is less than one hundred thousand dollars (\$100,000), then all of the trust fund shall be invested in investments described in subdivision (a)(1) of this section;

(2) The trust fund shall contain at all times liquid investments having a cost basis not less than thirty percent (30%) of the total contract proceeds disbursed from the trust fund as described in § 23-40-116(1)-(3) during the preceding calendar year;

(3) No investment shall be sold, exchanged, or liquidated at less than its cost if it would result in the aggregate cost basis of the trust fund minus undistributed net investment income being less than the aggregate amount of contract proceeds held in the trust fund. However, this

prohibition shall not apply if the seller contemporaneously deposits with the trustee a sum of money or other property in an amount equal to the loss realized upon the sale, exchange, or liquidation of such investment; and

(4) The portion of the contract proceeds collected for cash accommodation items pursuant to the terms of a contract shall be deposited into a separate account which shall be clearly identified as “cash accommodation funds” and shall set forth the name of the contract buyer. All income earned on the cash accommodation funds shall become a part of the principal of the respective accounts.

History. Acts 1985, No. 156, § 8; A.S.A. 1947, § 67-1720; Acts 1993, No. 406, § 1; Acts 1995, No. 852, § 7.

A.C.R.C. Notes. This section was formerly codified as § 23-40-112. Former § 23-40-115 has been renumbered as § 23-40-118.

The Federal Savings and Loan Insur-

ance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

23-40-116. Trust funds — Disbursements.

The trustee shall disburse money or other property from the trust fund only as follows:

(1) Upon the death of the contract beneficiary and upon proper proof and documentation being submitted to and approved by the Insurance Commissioner, or pursuant to such other method as may be permitted under valid rules and regulations adopted by the commissioner, in which event the contract proceeds shall be paid to the seller;

(2) Upon cancellation of the prepaid contract pursuant to § 23-40-122 and upon proper proof and documentation being submitted to and approved by the commissioner, or pursuant to such other method as may be permitted under valid rules and regulations adopted by the commissioner;

(3) Upon the breach of contract by either party, in which event the contract proceeds shall be paid according to a judgment of a court of competent jurisdiction; or

(4) Upon the withdrawal of net investment income or surplus by the seller, which may be made at any time and from time to time.

History. Acts 1985, No. 156, § 8; A.S.A. 1947, § 67-1720; Acts 1995, No. 852, § 8.

A.C.R.C. Notes. This section was for-

merly codified as § 23-40-113. Former § 23-40-116 has been renumbered as § 23-40-119.

23-40-117. Trust funds — Exemption from attachment, etc.

(a) All contract proceeds held in trust pursuant to the provisions of this chapter and all income derived therefrom shall be exempt from attachment, garnishment, execution, and claims of creditors, receivers, or trustees in bankruptcy. The trust fund shall not be seized, taken,

appropriated, or applied to pay any debt or liability of the seller by any legal or equitable process or by operation of law.

(b) The seller shall notify the Insurance Commissioner within ten (10) days upon the filing of bankruptcy or upon becoming insolvent. Upon receipt of notification, the commissioner shall notify the trustee of the trust fund, and all income earned after that date shall be held in trust by the trustee and disbursed only upon the direction of the commissioner.

History. Acts 1985, No. 156, § 9; A.S.A. 1947, § 67-1721; Acts 1995, No. 852, § 9. **A.C.R.C. Notes.** This section was for-

merly codified as § 23-40-114. Former § 23-40-117 has been renumbered as § 23-40-120.

23-40-118. Agent for deposit of contract proceeds.

(a) Each organization subject to this chapter shall designate an agent or agents, either by names of the individuals or by titles of their offices or positions, who shall be responsible for the deposit of contract proceeds collected under contracts for prepaid funeral benefits. The organization shall notify the Insurance Commissioner of the designation within ten (10) days after it becomes subject to this chapter and shall also notify the commissioner of any change in the designation within ten (10) days after the change occurs.

(b) If any person acting on behalf of the seller collects any contract proceeds under a contract for prepaid funeral benefits and fails to deliver it within ten (10) days after collection to a designated agent, or if any designated agent fails to deposit the contract proceeds within twenty (20) days after receipt of proceeds, he or she shall be punished as prescribed in § 23-40-106(a)(2).

History. Acts 1985, No. 156, § 10; A.S.A. 1947, § 67-1722; Acts 1995, No. 852, § 10; 2001, No. 1043, § 4.

merly codified as § 23-40-115. Former § 23-40-118 has been renumbered as § 23-40-121.

A.C.R.C. Notes. This section was for-

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-40-119. Annual report and fee.

(a) Each organization shall file an annual report and an annual report fee with the Insurance Commissioner on or before March 15 of each year in such form as the commissioner may require, showing the:

- (1) Names or account numbers, or both, of all persons with whom contracts for prepaid funeral benefits have been made prior to January 1 of that year that had not been fully discharged on January 1;
- (2) Date of contract;
- (3) Name of the trustee holding the trust fund; and

(4) Amount in the trust fund under each contract on the preceding December 31.

(b) If any officer of any organization fails or refuses to file an annual report or to cause it to be filed within thirty (30) days after he or she has been notified by the commissioner that the report is due and has not been received, then, upon a finding of such failure by a court of competent jurisdiction, he or she shall be guilty of a violation.

(c)(1) Effective on and after March 15, 1997, the annual report fee shall be based on the total amount of aggregate contracts for prepaid funeral benefits outstanding and unfulfilled as of December 31 of each year and shall be payable at the time the annual report is filed.

(2) The fee shall be based on the following schedule and shall be payable to the State Insurance Department Prepaid Trust Fund:

AGGREGATE AMOUNT OF OUTSTANDING PREPAID FUNERAL BENEFITS CONTRACTS IN ARKANSAS	ANNUAL FEE DUE STATE OF ARKANSAS
Up to \$250,000	\$200.00
Over \$250,001 to \$500,000	\$250.00
\$500,001 to \$1,000,000	\$500.00
\$1,000,001 to \$2,500,000	\$1,000.00
\$2,500,001 to \$5,000,000	\$2,000.00
\$5,000,001 to \$10,000,000	\$3,000.00
\$10,000,001 to \$20,000,000	\$4,000.00
\$20,000,001 to \$40,000,000	\$5,000.00
Over \$40,000,001	\$6,000.00

(d)(1)(A)(i)(a) Effective for all prepaid funeral benefits contracts executed on and after April 1, 1997, each licensee selling a prepaid funeral benefits contract shall remit to the State Insurance Department a one-time, per-contract fee of not less than five dollars (\$5.00) for each prepaid funeral benefits contract, including any amendments thereto, entered into by the licensee, whether cash or trust funded or funded by an insurance policy or annuity contract, unless the per-contract fees are otherwise eliminated or suspended by the commissioner pursuant to a rule or regulation.

(b) However, the per-contract fees once eliminated or suspended by rule of the commissioner may be reinstated by subsequent rule and regulation of the commissioner adopted upon a public hearing at a later date upon the commissioner's determination that these fees are essential and necessary to the operation of the Division of Prepaid Funeral Benefits of the State Insurance Department.

(ii) On and after July 1, 2001, the commissioner shall then transfer from each per-contract fee remitted to the department, into the Prepaid Funeral Contracts Recovery Program Fund pursuant to this act a portion of the fee in an amount to be determined by rules and

regulations of the commissioner and thereafter to be administered by the commissioner with advice from the Prepaid Funeral Contracts Recovery Program Board, pursuant to the provisions of this subchapter.

(B) The per-contract fees shall be remitted quarterly to the department for each quarter of the calendar year with a quarterly fee form as prescribed by the commissioner.

(C) The fees shall be remitted to the department no later than forty-five (45) days after each quarter.

(2)(A)(i) On and after July 1, 2001, the commissioner may by rule or regulation eliminate, reduce, suspend, or increase the per-contract fee or the portion of the per-contract fee allotted to the Prepaid Funeral Contracts Recovery Program Fund.

(ii) The per-contract fee may be charged to the purchaser of the contract.

(B) Any fee so charged and collected shall not be included in the term "contract proceeds" as defined in § 23-40-103(4) and shall not be subject to the deposit requirements of § 23-40-114(a).

(e)(1) Absent the commissioner's approval of an extension for good cause shown, licensees failing to timely report and pay any administrative and financial regulations fees to the State Insurance Department Prepaid Trust Fund may be subject to a penalty of one hundred dollars (\$100) per day for each day of delinquency, payable to the fund.

(2) The commissioner shall deposit all administrative and financial regulation fees and any penalties assessed under this section directly into the fund as special revenues.

(f)(1) Notwithstanding the provisions of § 23-40-107, if there are any unused funds from fees collected from organizations under subsections (c) and (d) of this section not disbursed for personal services, operating expenses, maintenance and operations, and support and improvements for the Division of Prepaid Funeral Benefits, such excess funds, if any, may be transferred to the Prepaid Funeral Contracts Recovery Program Fund to provide reparations to purchasers of prepaid funeral contracts who have purchased cash-funded prepaid funeral contracts from organizations that have been:

(A) Declared insolvent by a state or federal court of competent jurisdiction; or

(B) Determined by either the commissioner or a state or federal court of competent jurisdiction to have fund account deficiencies.

(2) Purchasers of prepaid funeral contracts requesting any discretionary relief from the Prepaid Funeral Contracts Recovery Program Fund after July 1, 2001, may include the contract holder or his or her surviving family representative or such other person as described in rules and regulations of the department.

(3) The commissioner may by rule and regulation describe the procedures, claim forms, qualifications, and process of filing a claim for aggrieved purchasers desiring to make a claim for reparations from any excess funds.

(4) No purchaser is provided in this section with any administrative right or legal or equitable right to any funds collected from fees collected under this section to satisfy any judgment or economic loss of the purchaser from a prepaid funeral organization, except to the extent that the commissioner, in his or her discretion, has set aside funds to provide discretionary relief to purchasers of prepaid funeral contracts from insolvent prepaid funeral organizations or those organizations with trust fund account shortages, and subject to limits of the Prepaid Funeral Contracts Recovery Program Fund and the claimant's actual contract payments made, excluding additional damages or interest or other equitable relief, or noneconomic damages.

History. Acts 1985, No. 156, § 11; A.S.A. 1947, § 67-1723; Acts 1995, No. 852, § 11; 1997, No. 372, §§ 8, 9; 1999, No. 1249, § 1; 2001, No. 1043, §§ 5, 6; 2005, No. 1994, § 152.

A.C.R.C. Notes. This section was for-

merly codified as § 23-40-116.

Meaning of "this act". Acts 2001, No. 1043, codified as §§ 23-40-106, 23-40-107, 23-40-114, 23-40-118, 23-40-119, 23-40-125.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-40-120. Records required — Examination.

(a) Each organization which has outstanding contracts for prepaid funeral benefits shall maintain within this state any records which the Insurance Commissioner may require to enable him or her to determine whether the organization is complying with the provisions of this chapter.

(b)(1) The records shall be subject to examination by the commissioner, or his or her representatives, as often as he or she deems advisable and not less frequently than every three (3) years. However, the commissioner shall determine the date of original examination without regard to the date of the original permit.

(2) Each permittee examined shall pay the actual meals, hotel, and traveling expenses of each authorized examiner from Little Rock and return. The expenses shall be prorated if more than one (1) examination is made on an examination trip.

(3)(A) All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter:

- (i) Shall be treated as confidential;
- (ii) Are not subject to subpoena; and
- (iii) May not be made public by the commissioner or any other person, except to the extent provided in § 23-61-205.

(B) All working papers, financial statement analyses, ratio calculations, and any other materials produced by State Insurance Department financial examiners or analysts, or documents submitted or

disclosed to the department by an insurer in response to a request from a department financial examiner or analyst during the course of reviewing or investigating the financial solvency, condition, or affairs of the organization:

- (i) Shall be treated as confidential;
- (ii) Are not subject to subpoena; and
- (iii) May not be made public by the commissioner or any other person, except to the extent provided in § 23-61-205.

(C) A recipient of information under this section other than the commissioner or department personnel must agree in writing to provide the confidential treatment required by this section prior to receiving the information, unless the prior written consent of the company to which the information pertains has been obtained.

History. Acts 1985, No. 156, § 12; A.S.A. 1947, § 67-1724; Acts 1995, No. 852, § 11; 1999, No. 881, § 3; 2005, No. 506, § 6.

A.C.R.C. Notes. This section was formerly codified as § 23-40-117.

23-40-121. [Repealed.]

Publisher’s Notes. This section, concerning the State General Services Fund Account, was repealed by Acts 1999, No.

881, § 4. The section was derived from Acts 1985, No. 156, § 14; 1985, No. 888, § 15; A.S.A. 1947, § 67-1726.

23-40-122. Cancellation.

A purchaser may cancel or transfer a prepaid contract as provided under this section, whether revocable or irrevocable, or whether cash funded or funded by insurance or an annuity, at any time prior to performance of the contract by the seller, subject to the following conditions:

- (1) In the case of a cash or trust funded prepaid contract:
 - (A) Prior to the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of all sums paid to the seller by the purchaser, not to exceed the contract price;
 - (B) After death, if the prepaid contract is revocable, the purchaser or his or her representative shall be entitled to receive one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price; or
 - (C) If the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid by him or her or proceeds paid to the seller, but shall have the right to change the provider of the contract services and merchandise to a substitute provider, in which event the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the amount paid to the seller by the purchaser, not to exceed the contract price;
- (2) In the case of a prepaid contract funded by life insurance:

(A) Prior to the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall have the right to receive not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser or his or her designee shall be entitled to receive not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(C)(i) Prior to the death of the contract beneficiary, if the contract is irrevocable, the prepaid contract purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the life insurance policy used to fund the prepaid contract or funds in an amount not less than one hundred percent (100%) of the cash surrender value of the policy used to fund the prepaid contract, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the policy proceeds paid to the seller, not to exceed the original face amount of the policy; or

(3) In the case of a prepaid contract funded by an annuity:

(A) Prior to the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser shall be entitled to receive a refund of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser for the annuity funding the prepaid contract;

(B) After the death of the contract beneficiary, if the prepaid contract is revocable, the purchaser or his or her designee shall be entitled to receive not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premium paid by the purchaser; or

(C)(i) Prior to the death of the contract beneficiary, if the prepaid contract is irrevocable, the purchaser shall not have the right to a refund of any funds paid to the seller but shall have the right to change the provider of the prepaid contract services and merchandise to a substitute provider, in which event the seller shall assign or transfer to the substitute provider, as directed by the contract owner, the annuity policy used to fund the prepaid contract, which shall be in an amount of not less than one hundred percent (100%) of the annuity value, not to exceed the premium paid by the purchaser.

(ii) After the death of the contract beneficiary, the seller shall transfer to the substitute provider not less than one hundred percent (100%) of the annuity proceeds received by the seller, not to exceed the premiums paid by the purchaser.

History. Acts 1995, No. 852, § 12; 2003, No. 987, § 5[4].

Publisher's Notes. Acts 2003, No. 987 did not contain a Section 2.

23-40-123. Delinquency proceedings.

(a) The Insurance Commissioner may apply to a court of competent jurisdiction for an order appointing him or her in his or her official capacity as receiver of and directing him or her to conserve, rehabilitate, or liquidate a prepaid funeral benefits contracts licensee upon one (1) or more of the following grounds:

(1) The licensee has not maintained trust funds received from contracts in the manner required by § 23-40-114;

(2) The licensee has allowed its permit to lapse or be revoked in accordance with this chapter and has not made a full and complete accounting and restitution, if appropriate, of all prepaid funeral benefits contracts funds deposited with it;

(3) The licensee is impaired or insolvent;

(4) The licensee has refused to submit its books, records, accounts, or affairs to reasonable examination by the commissioner;

(5) The licensee or any officer, director, or manager of the licensee has refused to be examined under oath concerning the licensee's affairs;

(6) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the licensee to perform its obligations under prepaid funeral benefits contracts sold or assumed by the licensee; or

(7) The licensee has failed to file its annual report within the time required by law and, after written demand by the commissioner, has failed to promptly give an adequate explanation for such failure.

(b) Circuit courts shall have original jurisdiction of all delinquency proceedings under this chapter, and any such court is authorized to make all necessary or appropriate orders to carry out the purposes of this chapter.

(c) The venue of delinquency proceedings against a licensee shall be in the Pulaski County Circuit Court.

(d) Delinquency proceedings instituted pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a licensee, and no court shall entertain a petition for the commencement of such proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(e)(1) The commissioner shall commence any such proceeding by application to the court for an order directing the licensee to show cause why the commissioner should not have the relief prayed for in the application.

(2) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the prepaid contracts purchaser, contract beneficiaries, or the public may require.

(f) An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every other order in delinquency proceedings having the character of a final order as to the particular portion of proceedings embraced therein.

History. Acts 1997, No. 372, § 10.

23-40-124. Compliance.

Compliance with this act shall be required for all licensees on and after March 16, 1997.

History. Acts 1997, No. 372, § 11. (10), and (13), 23-40-107, 23-40-110(b),

Meaning of “this act”. Acts 1997, No. 23-40-113(b)(7), 23-40-114(f), 23-40-372, codified as §§ 23-40-103(2), (9)(B), 119(c)-(e), 23-40-123, and 23-40-124.

23-40-125. Prepaid Funeral Contracts Recovery Program Fund — Created — Prepaid Funeral Contracts Recovery Program Board — Established.

(a) There is established within the State Insurance Department Prepaid Trust Fund an account to be known as the “Prepaid Funeral Contracts Recovery Program Fund”, hereinafter “fund”.

(b) No money is to be appropriated from this fund for any purpose except for expenses and payment of claims of the Prepaid Funeral Contracts Recovery Program at the direction of the Insurance Commissioner and the Prepaid Funeral Contracts Recovery Program Board.

(c) The fund shall be invested under the direction of the commissioner and the Treasurer of State, with advice from the Chief Fiscal Officer of the State as needed from time to time.

(d)(1) All income derived through investment of the fund, including, but not limited to, fees, interest, and dividends shall be credited as investment income to the fund and deposited therein.

(2) All income derived from fund transfers, subrogation awards, grants, orders or judgments of restitution, refunds, voluntary reimbursements or restitution, and gifts shall be credited as investment income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment except as may be provided in this subchapter.

(f)(1) The fund shall be administered by the commissioner, with advice from the Prepaid Funeral Contracts Recovery Program Board, hereinafter “board”.

(2) The purpose of the fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the impairment, insolvency, business interruption, or improper inactivity of a prepaid funeral organization licensed in this state under this chapter.

(g)(1) From the fee for each preneed funeral contract as required by § 23-40-119(d)(1)(A) and from any funds transferred to the fund pursuant to § 23-40-119(f)(1), the commissioner with board advice and

consultation shall administer the Prepaid Funeral Contracts Recovery Program.

(2) The commissioner may suspend fees or unused funds transfers or deposits into the fund at any time and for any period for which the commissioner determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve in compliance with a rule and regulation of the commissioner.

(h) The commissioner with board assistance shall adopt procedures governing management of the fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(i)(1) The commissioner may expend moneys in the fund for the following purposes:

(A) To make reimbursements on approved applications; and

(B) To pay related expenses involved in operating the program as permitted under state law.

(2) Reimbursements from the fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with all applicable rules of the fund.

(j)(1) The commissioner shall investigate all applications made and may reject or allow the claims, in whole or in part, to the extent that moneys are available in the fund.

(2) The commissioner may approve one (1) application that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part of a plan to arrange for another licensee to assume the obligations of the licensee being liquidated, if:

(A) The commissioner finds that the plan is reasonable and is in the best interests of the contract beneficiaries; and

(B) The plan is approved by a court.

(k)(1) In the event reimbursement is made to an applicant under this section, the commissioner, on behalf of the state, shall be subrogated in the reimbursed amount and may bring any action the commissioner deems advisable for the program against any person, including a prepaid licensee.

(2) The commissioner may enforce any claims that the program, on behalf of the state, may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and any other persons that the commissioner deems appropriate. Payments shall be made from the fund for such services.

(l)(1) There is created the Prepaid Funeral Contracts Recovery Program Board.

(2)(A) Members of the board shall consist of no fewer than five (5) nor more than nine (9) members of various licensed Arkansas prepaid funeral organizations, including one (1) consumer member selected from the Arkansas public at large.

(B) The members of the board shall be selected by member licensees, subject to approval of the commissioner.

(C)(i) Each member of the board may serve up to two (2) consecutive four-year terms.

(ii) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to approval of the commissioner.

(D) In approving selections to the board, the commissioner shall consider, among other things, whether all member licensees are fairly represented.

(m)(1) The board shall assist the commissioner and come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the laws of this state.

(2) The fund, as well as board action, shall be subject to examination and regulation by the commissioner.

(3)(A) The board shall prepare and submit to the commissioner each year, not later than one hundred twenty (120) days after the program's fiscal year, a financial report in a form approved by the commissioner and a report of program activities during the preceding fiscal year.

(B) Upon request of a licensed prepaid funeral organization in this state, the commissioner shall provide the member prepaid funeral organization with a copy of the report.

(n) There shall be no liability on the part of and no cause of action of any nature shall arise against any member of the board, the commissioner, or his or her representatives, agents, or employees for any act or omission by them in the performance of their powers and duties under this chapter, or in its administration, dispensation, handling, or collection of funds for the program.

History. Acts 2001, No. 1043, § 7; 2003, No. 987, § 6[5]; 2003, No. 1473, § 50.

A.C.R.C. Notes. Pursuant to Acts 2003, No. 1473, § 72, the amendment of § 23-40-125 by Acts 2003, No. 987, § 6, supersedes the amendment of § 23-40-125 by Acts 2003, No. 1473, § 50. As a result,

Acts 2003, No. 1473, § 51, is also superseded. Acts 2003, No. 1473, § 51, deleted subsections (l)-(n) and enacted the language in those subsections as a new code section.

Publisher's Notes. Acts 2003, No. 987 did not contain a Section 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Insurance Law, 24 U. Ark. Little Rock L. Rev. 577.

23-40-126. Unfair competition or unfair or deceptive acts or practices prohibited — Penalties.

An unfair method of competition or an unfair or deceptive act or practice under §§ 23-66-206(1)-(4), 23-66-206(6)-(8), and 23-66-207 — 23-66-213 in the sale of a prepaid funeral benefits contract is a violation of this chapter and may be punished under this chapter or the Trade Practices Act, § 23-66-201 et seq.

History. Acts 2009, No. 538, § 1.

CHAPTER 41
SALE OF CHECKS

SECTION.

23-41-101 — 23-41-122. [Repealed.]

23-41-101 — 23-41-122. [Repealed.]

Publisher's Notes. This chapter, concerning the Sale of Checks Act, was repealed by Acts 2007, No. 1595, § 2, with the exception of § 23-41-116, which was repealed by Acts 1987, No. 447, § 12. The chapter was derived from the following sources:

23-41-101. Acts 1965, No. 124, § 1; A.S.A. 1947, § 67-1901.

23-41-102. Acts 1965, No. 124, § 2; A.S.A. 1947, § 67-1902; Acts 1987, No. 447, §§ 1-3.

23-41-103. Acts 1965, No. 124, § 4; A.S.A. 1947, § 67-1904; Acts 1987, No. 447, § 4.

23-41-104. Acts 1965, No. 124, § 21; A.S.A. 1947, § 67-1921; Acts 1987, No. 447, § 17.

23-41-105. Acts 1965, No. 124, § 20; A.S.A. 1947, § 67-1920.

23-41-106. Acts 1965, No. 124, § 13; A.S.A. 1947, § 67-1913.

23-41-107. Acts 1965, No. 124, § 19; A.S.A. 1947, § 67-1919.

23-41-108. Acts 1965, No. 124, § 17; A.S.A. 1947, § 67-1917; Acts 1987, No. 447, § 16.

23-41-109. Acts 1965, No. 124, § 18; A.S.A. 1947, § 67-1918.

23-41-110. Acts 1965, No. 124, § 3; A.S.A. 1947, § 67-1903; Acts 1987, No. 447, § 3; 2003, No. 852, § 1.

23-41-111. Acts 1965, No. 124, § 5;

A.S.A. 1947, § 67-1905; Acts 1987, No. 447, § 5.

23-41-112. Acts 1965, No. 124, § 6; A.S.A. 1947, § 67-1906; Acts 1987, No. 447, §§ 5, 6.

23-41-113. Acts 1965, No. 124, § 7; 1975, No. 875, § 1; A.S.A. 1947, § 67-1907; Acts 1987, No. 447, § 7.

23-41-114. Acts 1965, No. 124, §§ 8, 9; A.S.A. 1947, §§ 67-1908, 67-1909; Acts 1987, No. 447, §§ 8, 9.

23-41-115. Acts 1965, No. 124, § 9; A.S.A. 1947, § 67-1909; Acts 1987, No. 447, § 9.

23-41-116. Acts 1965, No. 124, § 12; A.S.A. 1947, § 67-1912.

23-41-117. Acts 1965, No. 124, § 10; A.S.A. 1947, § 67-1910; Acts 1987, No. 447, § 10.

23-41-118. Acts 1965, No. 124, § 15; A.S.A. 1947, § 67-1915.

23-41-119. Acts 1965, No. 124, § 11; A.S.A. 1947, § 67-1911; Acts 1987, No. 447, § 11.

23-41-120. Acts 1965, No. 124, § 13; A.S.A. 1947, § 67-1913; Acts 1987, No. 447, § 13.

23-41-121. Acts 1965, No. 124, § 14; A.S.A. 1947, § 67-1914; Acts 1987, No. 447, § 14.

23-41-122. Acts 1965, No. 124, § 16; A.S.A. 1947, § 67-1916; Acts 1987, No. 447, § 15.

CHAPTER 42
ARKANSAS SECURITIES ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. ADMINISTRATION.
 3. BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS.
 4. REGISTRATION OF SECURITIES.
 5. REGULATION OF TRANSACTIONS.
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Publisher's Notes. Acts 1959, No. 254, § 29, provided, in part, that all effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if the act had not been passed and that they would be considered to have been filed, entered, or imposed under the act, but are governed by prior law. The section further provided for the judicial review of all administrative orders for which review proceedings had not been instituted prior to the effective date of the act; and that prior law would govern certain suits, actions, etc., which were pending or initiated on the basis of facts or circumstances occurring before the effective date of the act, and would apply to certain offers or sales made within one year after the effective date after the act.

Effective Dates. Acts 1997, No. 173, § 27: April 11, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the

enactment of the National Securities Markets Improvement Act of 1996 on October 11, 1996 effectively preempted portions of the Arkansas Securities Act, and that because of such enactment, portions of the Arkansas Securities Act are in conflict with federal law. That in order to protect the Arkansas citizens who invest in and are affected by the securities markets, it is necessary that regulation under the Arkansas Securities Act be uniform with both federal law and the laws of other states. It is necessary that this protection begin immediately, except for the portions of the Arkansas Securities Act pertaining to investment advisers which should begin on April 11, 1997. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval except for the portions hereof pertaining to investment advisers, which portions shall be in full force and effect from and after April 11, 1997."

RESEARCH REFERENCES

Ark. L. Rev. Arkansas Securities Act of 1959, 13 Ark. L. Rev. 323.

Investment Securities: Article VIII, 16 Ark. L. Rev. 98.

Securities Regulation of Real Estate Programs, 27 Ark. L. Rev. 651.

U. Ark. Little Rock L.J. Note: A Definition of "Investment Contracts" and Equitable Defenses to Suit for Rescission for Nonregistration Under the Arkansas Securities Act, 1 U. Ark. Little Rock L.J. 366.

Bell, Real Estate and Unconventional Securities Concepts Under the Arkansas Securities Act, 3 U. Ark. Little Rock L.J. 75.

Note, Securities Law — Partnerships — Adoption of an Expansive Test for Defining a Security. Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987), 11 U. Ark. Little Rock L.J. 369.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Bank Commissioner.

Commodity Options.

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Damages.

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Person not engaged in interstate commerce cannot attack Blue Sky Law on ground that it is a burden on interstate

commerce. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

State may inquire into the condition of corporations without violating the provisions of the Fourth and Fifth Amendments of the United States Constitution. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

Purpose.

The Arkansas Securities Act was passed primarily for the purpose of protecting

members of the public who might invest in offerings by promoters of securities. *McMullan v. Molnaird*, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Bank Commissioner.

A city bank, which objected to state banking board's grant of application for a charter for a new bank in the city, was without standing to complain that the Bank Commissioner acted unlawfully in assuming supervision and enforcement of the Arkansas Securities Act with respect to stock in the proposed bank. *Bank of Glenwood v. Arkansas State Banking Bd.*, 260 Ark. 677, 543 S.W.2d 761 (1976).

Commodity Options.

The Arkansas Securities Act does not govern commodity options since that field has been preempted by the federal government. *International Trading, Ltd. v. Bell*, 262 Ark. 244, 556 S.W.2d 420 (1977), cert. denied, 436 U.S. 956, 98 S. Ct. 3068, 57 L. Ed. 2d 1120 (1978).

Compliance with Chapter.

This chapter will not be construed to permit an issuer or dealer to solicit sales at will in Arkansas without complying with this chapter so long as an act entirely within his control, such as placing the proceeds in a bank account or issuing stock certificates, was performed at or from another state. *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50 (Ct. App. 1979), cert. denied, *Smith v. Arkansas*, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980).

A promoter cannot avoid the requirements of the Securities Act by simply labeling or calling his enterprise a joint venture when in fact such transaction was something different. *Smith v. State*, 266

Ark. 861, 587 S.W.2d 50 (Ct. App. 1979), cert. denied, *Smith v. Arkansas*, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980).

Damages.

This chapter tracks federal law and, therefore, if the damages awarded are good under the federal securities acts, they also are good under this chapter. *Farley v. Henson*, 11 F.3d 827 (8th Cir. 1993).

Securities.

State Securities Commissioner did not have a statutory basis to seek an injunction to prevent defendants from performing certain acts in regard to carrying on their business of tutoring applicants for license as broker-dealers under the rules of the Municipal Securities Rulemaking Board since none of the acts are in connection with the offer, sale or purchase of any security, directly or indirectly. *Bell v. Investment Training Inst., Inc.*, 271 Ark. 663, 609 S.W.2d 919 (1981).

Transactions whereby buyer exercised option to purchase 100% of stock in car paint business involved the sale and purchase of securities under the terms of the Arkansas Securities Act. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Cited: *Vanderboom v. Sexton*, 294 F. Supp. 1178 (W.D. Ark. 1969); *Vanderboom v. Sexton*, 422 F.2d 1233 (8th Cir. Ark. 1970); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972); *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977); *Ballentine v. Ballentine*, 275 Ark. 212, 628 S.W.2d 327 (1982); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark. 320, 691 S.W.2d 853 (1985).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-42-101. Title.
- 23-42-102. Definitions.
- 23-42-103. Applicability.
- 23-42-104. Criminal penalties.
- 23-42-105. Prosecution of criminal offenses.
- 23-42-106. Civil liability.

SECTION.

- 23-42-107. Consent to service of process.
- 23-42-108. Rights and remedies cumulative.
- 23-42-109. Waiver of compliance void.
- 23-42-110. False or misleading statements unlawful.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1971, No. 131, § 9: Feb. 22, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the field of securities has become extremely complex and is in need of stricter regulation to assure that the purchasers of securities receive the protection that they deserve; that it is necessary for the Securities Commissioner to have the authority to immediately issue a stop order denying, suspending or revoking the effectiveness of a registration statement under certain conditions; that the penalty for violation of the Securities Act should be increased to discourage further violations and to curtail the total number of violations; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Act 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the filing fee for filing a registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act; that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be declared; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 697, § 4: Apr. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the interrelationship between the Arkansas Securities Act and the Arkansas Savings and Loan Act are unclear; and that the Arkansas Securities Commissioner acting as Securities Commissioner and also as Arkansas Savings and Loan Supervisor

must have a clarification of his authority in each area; and that therefore an emergency exists and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 806, § 25: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Securities Commissioner provide a duplicity of regulation which creates undue burden upon mortgage loan companies and loan brokers while at the same time not being in the public interest, and it is found that this Act will eliminate much of such duplicity and provide adequate protection of the public; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas’ entry into the System was scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

Acts 1983, No. 885, § 4: Mar. 28, 1983. Emergency clause provided: “It is found and declared that the exclusion of stock splits, reverse stock splits, or changes in par value from the application of the Arkansas Securities Act is a matter of uncertainty which requires immediate clarification.

This Act is immediately necessary in order to facilitate the execution of such reclassifications of securities without registration or exemption under the Arkansas Securities Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 776, § 5: Apr. 7, 1987. Emergency clause provided: “It has been found and it is declared by the General Assembly that an urgent need exists to define the term “farm cooperative” in order to clarify which organizations are eligible for an exemption from registration under the Arkansas Securities Act (Act No. 254 of the Acts of Arkansas of 1959), as amended, of certain securities issued by farm cooperatives, and that immediate passage of this Act is necessary to provide such clarification. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.”

Acts 1993, No. 1147, § 1705: Jan. 1, 1994.

RESEARCH REFERENCES

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 1 et seq.
C.J.S. 79 C.J.S. Supp., Secur. Reg., § 188 et seq.

U. Ark. Little Rock L.J. Survey—Securities, 11 U. Ark. Little Rock L.J. 255.

23-42-101. Title.

This chapter may be cited as the “Arkansas Securities Act”.

History. Acts 1959, No. 254, § 27; A.S.A. 1947, § 67-1261.

RESEARCH REFERENCES

Ark. L. Notes. Goforth, Treatment of LLC Membership Interests Under the Ar-

kansas Securities Act, 1998 Ark. L. Notes 33.

CASE NOTES

Cited: Foster v. National Union Fire Ins. Co., 902 F.2d 1316 (8th Cir. 1990); Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

23-42-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1)(A) "Agent" means an individual, other than a broker-dealer, who:

(i) Represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities; and

(ii) Supervises individuals who effect or attempt to effect purchases or sales of securities for a broker-dealer.

(B) "Agent" does not include an individual who represents:

(i) An issuer in:

(a) Effecting transactions in a security exempted by § 23-42-503(a)(1)-(4) or (a)(8) and any other transactions in a security exempted by other subdivisions or subsections of § 23-42-503 which the Securities Commissioner may by rule or order prescribe;

(b) Effecting transactions exempted by § 23-42-504 unless otherwise required by § 23-42-504;

(c) Effecting transactions in covered securities exempted by section 18(b)(3) or section 18(b)(4)(C) of the Securities Act of 1933, and any other transactions in a covered security which the commissioner may by rule or order prescribe;

(d) Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(e) Effecting transactions involving a reorganization or any other individual assisting the issuer or any other constituent party in the process of the reorganization, so long as the individual is not employed for the primary purpose of obtaining or soliciting proxies, consents, or other required means of approval from the security holders of the issuer or any other constituent party to the reorganization and receives no compensation other than his or her regular salary and reimbursement for actual expenses, if any, incurred in good faith in the course of such duties or activities; or

(ii) A broker-dealer in effecting a transaction for a customer in this state if:

(a) Such a transaction is effected on behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer;

(b) The individual is not ineligible to register with this state for any reason;

(c) The individual is registered with a registered securities association and at least one (1) state;

(d) The broker-dealer with which the individual is associated is registered with this state;

(e)(1) The transaction is effected by the individual:

(A) To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

(B) Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one-year period prior to the transaction. Except that, if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state, this subdivision (1)(B)(ii) shall not be applicable unless the individual files with the commissioner an application for registration within ten (10) calendar days of the later of the date of the transaction or the date of the discovery of the presence of the customer in this state for thirty (30) or more consecutive days or the change in the customer's residence.

(2) For purposes of subdivision (1)(B)(ii)(e)(1)(B) of this section, each of up to three (3) individuals who are designated to effect transactions during the absence or unavailability of the assigned individual for a customer may be treated as such an assigned individual; and

(f) The transaction is effected within the period beginning on the date on which the individual files with the commissioner an application for registration and ending on the earlier of:

(1) Sixty (60) days after the date the application is filed; or

(2) The time at which the commissioner notifies the individual that he or she has denied the application for registration or has stayed the pendency of the application for cause.

(C) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition;

(2)(A) "Branch office" means any location other than the main office of a broker-dealer or investment adviser where an agent or representative regularly conducts business on behalf of the broker-dealer or investment adviser.

(B) "Branch office" includes a location that is held out as an office where an agent or representative regularly conducts business on behalf of a broker-dealer or investment advisor.

(C) "Branch office" does not include:

(i) A location that is established solely for customer service or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) A location that is the primary residence of the agent or representative if:

(a) Only agents or representatives who reside at the location and are members of the same immediate family conduct business at the location;

(b) The location is not held out to the public as an office and the agent or representative does not meet with customers at the location;

(c) Neither customer funds nor securities are handled at the location;

(d) The agent or representative is assigned to a designated branch office and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or representative;

(e) The correspondence of the agent or representative and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the agent or representative is associated;

(f) Electronic communications, including email, are made through the electronic system of the broker-dealer or investment adviser;

(g) All orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office;

(h) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser; and

(i) A list of the residence locations is maintained by the broker-dealer or investment adviser;

(iii)(a) A location other than a primary residence that:

(1) Is used for a securities or investment advisory business for less than thirty (30) business days in any one (1) calendar year; and

(2) Satisfies the requirements of subdivisions (2)(C)(ii)(b)-(h) of this section.

(b) As used in this subdivision (2)(C)(iii), "business day" does not include a day in which the agent or representative spends at least four (4) hours at the designated branch office of the agent or representative during the hours that the designated branch office is normally open for business;

(iv) An office of convenience that is not held out to the public as an office where associated persons occasionally and exclusively by appointment meet with customers;

(v) A location that is used primarily to engage in nonsecurities activities and from which the agent or representative effects no more than twenty-five (25) securities transactions in any one (1) calendar year, if any advertisement or sales literature identifying the location also provides the address and telephone number of another location from which the agent or representative conducting business at the location is directly supervised;

(vi) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan;

(3)(A) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for his or her own account.

(B) "Broker-dealer" does not include:

(i) An agent;

- (ii) An issuer;
- (iii) A bank, savings institution, savings and loan association, or trust company;
- (iv) A person that has no place of business in this state if:
 - (a) The person effects transactions in this state exclusively with or through:
 - (1) The issuers of the securities involved in the transactions;
 - (2) Other broker-dealers; or
 - (3) Banks, savings institutions, savings and loan associations, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 - (b) The person:
 - (1) Is registered under the securities law of the state in which it has a principal place of business;
 - (2) Is registered or not required to be registered as a broker-dealer under the Securities Exchange Act of 1934; and
 - (3) Does not effect transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months other than transactions with:
 - (A) The issuer of a security involved in the transaction;
 - (B) Another broker-dealer; or
 - (C) A bank, a savings institution, a savings and loan association, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust, or another financial institution or institutional buyer, whether acting for itself or as a trustee; and
 - (v) A person that is a resident of Canada and has no office or other physical presence in this state, if the person:
 - (a) Only effects or attempts to effect transactions in securities:
 - (1) With or through the issuers of the securities involved in the transactions, broker-dealers, banks, savings institutions, trust companies, insurance companies, qualified purchasers as defined by the Securities and Exchange Commission, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
 - (2) With or for a person from Canada that is temporarily present in this state if the person and the person from Canada had a bona fide business-client relationship before the person from Canada entered this state; or
 - (3) With or for a person from Canada that is present in this state and has transactions that are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;
 - (b) Files a notice in the form of the person's current application required by the jurisdiction in which the person's main office is located and a consent to service of process;

(c) Is a member of a self-regulatory organization or stock exchange in Canada;

(d) Maintains the person's provincial or territorial registration and the person's membership in good standing in a self-regulatory organization or stock exchange;

(e) Discloses to the person's clients in this state that the person is not subject to the full regulatory requirements of this chapter; and

(f) Is not in violation of § 23-42-507;

(4) "Commissioner" means the Securities Commissioner;

(5) "Covered security" means any security described as a covered security in section 18(b) of the Securities Act of 1933;

(6)(A) "Farm cooperative" means any cooperative formed for the purpose of:

(i) Purchasing, producing, processing, marketing, distributing, or selling crops or livestock for, or on behalf of, its members; or

(ii) Purchasing, marketing, or distributing meat, dairy, bakery, produce, or other food or grocery products for, or on behalf of, its members.

(B) "Farm cooperative" shall not include any association formed for the purpose of purchasing food or grocery products for, or on behalf of, consumers;

(7) "Fraud", "deceit", and "defraud" are not limited to common-law deceit;

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(9) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) A bank, savings and loan association, credit union, or trust company;

(B) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession;

(C) A broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(D) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service of general, regular, and paid circulation, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(E) A person who has no place of business in this state if:

(i) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust compa-

nies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(ii) During the preceding twelve-month period he or she has had fewer than six (6) clients who are residents of this state, other than those persons specified in subdivision (9)(E)(i) of this section; or

(F) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(10) "Issuer" means every person who issues or proposes to issue any security, except that:

(A) With respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued;

(B) In the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity;

(C) With respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is used or is to be used;

(D) With respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of the right or of any whole or fractional interest in the right who creates fractional interests therein for the purpose of the offering; and

(E) For life settlement contracts, "issuer" means:

(i) For a fractional or pooled interest in a life settlement contract, the person that creates for the purpose of sale the fractional or pooled interest; and

(ii) For a life settlement contract that is not fractionalized or pooled, the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent of a broker-dealer;

(11) "Main office" means the principal place of business of a broker-dealer or an investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(13) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust

where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(14) “Representative” means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(A) Makes any recommendation or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given; or

(D) Supervises employees who perform any of the foregoing;

(15)(A)(i) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) Any security given or delivered with, or given as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(iv) A purported gift of assessable stock is considered to involve an offer and sale.

(v) Every other sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(B) The terms defined in this subdivision (15) do not include:

(i) Any bona fide pledge or loan;

(ii) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(iii) Any stock split, reverse stock split, or change in par value which involves the substitution of a security of an issuer for another security of the same issuer; or

(iv) Any act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such an exchange and partly for cash;

(16) “Securities Act of 1933”, “Securities Exchange Act of 1934”, “Public Utility Holding Company Act of 1935”, “Investment Advisers Act of 1940”, and “Investment Company Act of 1940” mean the federal statutes of those names, as amended;

(17)(A) “Security” means any:

- (i) Note;
- (ii) Stock;
- (iii) Treasury stock;
- (iv) Bond;
- (v) Debenture;
- (vi) Evidence of indebtedness;
- (vii) Certificate of interest or participation in any profit-sharing agreement;
- (viii) Collateral-trust certificate;
- (ix) Preorganization certificate or subscription;
- (x) Transferable share;
- (xi) Investment contract;
- (xii) Variable annuity contract;
- (xiii) Life settlement contract or fractionalized or pooled interest in a life settlement contract;
- (xiv) Voting-trust certificate;
- (xv) Certificate of deposit for a security;
- (xvi) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or
- (xvii) In general, any interest or instrument commonly known as a “security” or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(B) Except as set forth in subdivision (17)(A)(xiii) of this section, “security” does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company; and

(18) “State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

History. Acts 1959, No. 254, § 13; 1961, No. 248, § 6; 1963, No. 479, § 2; 1973, No. 47, §§ 10, 11; 1975, No. 697, § 2; 1975, No. 844, § 6; 1977, No. 493, §§ 4, 5; 1977, No. 806, § 24A; 1983, No. 836, §§ 13, 26; 1983, No. 885, § 1; A.S.A. 1947, § 67-1247; Acts 1987, No. 776, § 1; 1993, No. 1147, § 1802; 1995, No. 845, § 1; 1997, No. 173, § 1; 2001, No. 468, §§ 1, 2; 2009, No. 534, § 1; 2011, No. 338, § 1; 2011, No. 339, §§ 1 – 3.

Publisher’s Notes. Acts 1993, No. 1147, § 1809, provided: “All laws and parts of laws in conflict with this act are hereby repealed.”

Amendments. The 2009 amendment added (2) and (11).

The 2011 amendment by No. 338 rewrote (3).

The 2011 amendment by No. 339 inserted (1)(A)(ii); and substituted “life settlement contracts” for “viatical contracts” or variant throughout (10)(E) and in (17)(A)(xiii).

U.S. Code. The Securities Act of 1933, referred to in this section, is codified as 15 U.S.C. § 77a et seq. The Securities Exchange Act of 1934 is codified as 15 U.S.C. § 78a et seq. The Public Utility Holding Company Act of 1935 was codified as 15 U.S.C. § 79 et seq. [repealed]. Its replacement is codified at 42 U.S.C. § 16451 et seq. The Investment Company Act of 1940 is codified as 15 U.S.C. § 80a-1 et seq.

The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80a-1 et seq. The Investment Advisers Act of 1940 is codified as 15 U.S.C. § 80b-1 et seq. The Public Utility

Holding Company Act of 1935 was codified as 15 U.S.C. § 79 et seq. [repealed]. Its replacement is codified at 42 U.S.C. § 16451 et seq. The Securities Act of 1933 is

codified as 15 U.S.C. § 77a et seq. The Securities Exchange Act of 1934 is codified as 15 U.S.C. § 78a et seq.

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Securities.

Agents.

In effecting or attempting to effect purchases or sales of securities an individual is an agent, though issuer neither employs nor asks the person to solicit purchasers, where issuer is aware of promotional activities and does not attempt to curtail them. *Quick v. Woody*, 295 Ark. 168, 747 S.W.2d 108 (1988).

Former employer did not violate § 23-42-106(c) by gathering information and answering questions about an investment opportunity offered by a purchaser of his company; his conduct did not rise to the level of an overt promotion because he did not participate in an investment meeting, and bonus money offered by the former employer was not earmarked for investment purposes. Therefore, he was not acting as an agent of the new company. *Bristow v. Mourot*, 99 Ark. App. 386, 260 S.W.3d 733 (2007).

Broker-Dealers.

A broker-dealer is one engaged in the business of effecting transactions in securities, according to the definition of this section and an isolated transaction does not constitute one a broker-dealer. *Shepherd v. State*, 246 Ark. 744, 439 S.W.2d 627 (1969).

Issuers.

Under this section, there is not considered to be any issuer with respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production from such titles or leases. *Shepherd v. State*, 246 Ark. 744, 439 S.W.2d 627 (1969).

Offer or Offer to Sell.

Because an option to purchase a security is an interest in the security, a corporation, by agreeing to grant an individual an option to purchase stock, made the individual an offer and, for the purposes of the then existing version of § 23-42-504(a)(9), all subsequent payments to escrow account and other subsequent transactions between the parties and involving the exercise of the option were “transactions pursuant to an offer” as contemplated by former subdivision (10)(B) of this section. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Sale.

Sale of a unit in a partnership constituted the sale of a security within the meaning of this section. *Casali v. Schultz*, 292 Ark. 602, 732 S.W.2d 836 (1987).

Securities.

The agreement between the parties to form a nonprofit corporation, from which they each expected to make a profit, was not a security. *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971).

Where interests in an apartment complex were sold to investors as a “tax shelter,” but where the risk of loss of money actually invested was placed squarely on

the investors, who were thereby mere passive contributors of risk capital, the joint venture interests constituted securities. *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977).

Five elements determine whether a given transaction involves the sale of a "security": (1) the investment of money or money's worth; (2) in a venture; (3) the expectation of some benefit to the investor as a result of the investment; (4) the contribution towards the risk capital of the venture; and (5) the absence of direct control over the investment or policy. *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50 (Ct. App. 1979), cert. denied, *Smith v. Arkansas*, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980); *First Fin. Fed. Sav. & Loan Ass'n v. E.F. Hutton Mtg. Corp.*, 652 F. Supp. 471 (W.D. Ark. 1987), aff'd, 834 F.2d 685 (8th Cir. Ark. 1987); *Carder v. Burrow*, 327 Ark. 545, 940 S.W.2d 429 (1997).

A bank's 100% participation interest in an unsecured note held by another bank was not a security under subdivision (12) of this section. *Union Nat'l Bank v. Farmers Bank*, 786 F.2d 881 (8th Cir. 1986).

Mortgages purchased by savings and loan association held not to constitute securities. *First Financial Federal Sav. & Loan Assn. v. E.F. Hutton Mtg. Corp.*, 834 F.2d 685 (8th Cir. Ark. 1987).

Regardless of the label on a document, the underlying economic substance of a security is an arrangement where the investor is a mere passive contributor of risk capital to a venture in which he has no direct or managerial control. *Casali v. Schultz*, 292 Ark. 602, 732 S.W.2d 836 (1987).

Certificates of interest or participation in oil leases are included in the legislative definition of securities required to be registered. *McMullan v. Molnaird*, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Loan participations held not securities within the meaning of this section. *Grand Prairie Sav. & Loan Ass'n v. Worthen Bank & Trust Co.*, 298 Ark. 542, 769 S.W.2d 20 (1989).

The sale of a fractional percentage of a "working interest" in an oil lease constitutes the sale of a security. *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989).

Stock involved in the alleged merger of two companies was not a security within the meaning of this section. *Cook v. Wills*, 305 Ark. 442, 808 S.W.2d 758 (1991).

Cited: *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974); *International Trading, Ltd. v. Bell*, 262 Ark. 244, 556 S.W.2d 420 (1977); *Wilkins v. M & H Fin., Inc.*, 476 F. Supp. 212 (E.D. Ark. 1979); *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979); *Hardcastle v. State*, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-103. Applicability.

(a)(1) Sections 23-42-106, 23-42-108, 23-42-109, 23-42-212, 23-42-301(a), 23-42-501, and 23-42-507 apply to persons who sell or offer to sell when:

(A) An offer to sell is made in this state; or

(B) An offer to buy is made and accepted in this state.

(2) Sections 23-42-212, 23-42-301(a), and 23-42-507 apply to persons who buy or offer to buy when:

(A) An offer to buy is made in this state; or

(B) An offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(A) Originates from this state; or

(B) Is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4)(A) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

- (i) Is communicated to the offeror in this state; and
- (ii) Has not previously been communicated to the offeror, orally or in writing, outside this state.

(B) Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(A) The publisher circulates, or there is circulated on his or her behalf, in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds ($\frac{2}{3}$) of its circulation outside this state during the past twelve (12) months; or

(B) A radio or television program originating outside this state is received in this state.

(b) Sections 23-42-307, 23-42-301(c), as well as § 23-42-212, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

History. Acts 1959, No. 254, § 26; 1983, No. 836, § 21; A.S.A. 1947, § 67-1260; Acts 1999, No. 363, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

CASE NOTES

General Partnerships.

The mere fact that an investment takes the form of a general partnership does not insulate it from the reach of this chapter.

Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

Cited: Billings v. Investment Trust, 309 F.2d 681 (8th Cir. 1962).

23-42-104. Criminal penalties.

(a) Any person who knowingly violates § 23-42-507 shall be guilty of the offense of “securities fraud”. Securities fraud is a Class B felony.

(b) Any person who knowingly violates § 23-42-501 shall be guilty of the offense of “felony offer or sale of unregistered and nonexempt securities”. Felony offer or sale of unregistered and nonexempt securities is a Class D felony.

(c) Any person who negligently violates § 23-42-501 shall be guilty of the offense of “offer or sale of unregistered and nonexempt securities”.

Offer or sale of unregistered and nonexempt securities is a Class A misdemeanor.

(d) Any person who knowingly violates any rule or order of the Securities Commissioner shall be guilty of a Class B misdemeanor. No person may be imprisoned for a violation of any rule or order of which that person did not have actual knowledge.

(e) Any person who knowingly engages in any unlawful conduct prohibited by this chapter, except as provided in subsection (a), subsection (b), subsection (c), or subsection (d) of this section, shall be guilty of a Class D felony.

(f) “Purposely”, “knowingly”, “recklessly”, “negligently”, and the classes of felonies and misdemeanors set forth in this section shall be as defined and have such penalties as set forth in the Arkansas Criminal Code.

(g) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or common law.

(h) The provisions of subsection (e) of this section shall not apply to any violation of § 23-42-509.

History. Acts 1959, No. 254, § 21; 1961, No. 248, § 8; 1971, No. 131, § 5; 1973, No. 47, § 16; 1977, No. 493, § 12; 1979, No. 754, § 7; A.S.A. 1947, § 67-1255; Acts 1997, No. 173, § 3.

Meaning of “Arkansas Criminal Code”. See note to § 5-1-101.

RESEARCH REFERENCES

Ark. L. Rev. Note, Promissory Demand Notes: Investor Protection or Peril, Arthur Young & Co. v. Reves, 42 Ark. L. Rev. 1075.

CASE NOTES

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Constitutionality.
Included Offenses.

Constitutionality.

Former act that provided for punishment of corporation by fine did not constitute cruel and inhuman punishment. Standard Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

Included Offenses.

Conviction of a person charged under subsection (a) of this section with violation of § 23-42-501, who defended on the

ground that he had obtained an exemption for the security sold under § 23-42-504(a), was not sustained by evidence that the defendant sold the security to persons who were not on the list of offerees filed with the securities commissioner in compliance with a rule of the commissioner, such sales being violations only of subsection (b) of this section, which was not an included offense within subsection (a) of this section. Gaskin v. State, 244 Ark. 541, 426 S.W.2d 407 (1968).

Cited: Gaskin v. State, 248 Ark. 168, 450 S.W.2d 557 (1970); Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972); Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-105. Prosecution of criminal offenses.

(a)(1) Prosecutions for offenses described in § 23-42-104 must be commenced within the following periods of limitation:

(A) Felonies — five (5) years from the date of the occurrence; and

(B) Misdemeanors — one (1) year from the date of the occurrence.

(2) The five-year felony and one-year misdemeanor period of limitation does not begin to run until after the commission of the last overt act in the furtherance of a scheme or course of conduct.

(b) For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated hereunder shall be considered to have been committed in:

(1) Any county in which any act was performed in furtherance of the transaction which violated this chapter;

(2) Any county in which the principal or an aider or abettor initiated or acted in furtherance of a course of conduct;

(3) Any county from which any violator gained control or possession of any proceeds of the violation or of any books, records, documents, or other material or objects which were used in furtherance of the violation; or

(4) Any county from which or into which the violator directed any postal, telephonic, electronic, or other communication in furtherance of the violation.

(c) The Securities Commissioner may refer such evidence as is available concerning violations of this chapter or any rule or order hereunder to any appropriate prosecuting authority.

History. Acts 1959, No. 245, § 21; 1979, No. 754, § 7; A.S.A. 1947, § 67-1961, No. 248, § 8; 1977, No. 493, § 13; 1255.

CASE NOTES**Statute of Limitations.**

The evidence of defendant's actions in offering stock in a company that he founded on a fraudulent premise constituted the "last overt act in the furtherance of a scheme or course of conduct," which culminated in the sale of the stock and tolled the five-year statute of limitations.

Hunter v. State, 330 Ark. 198, 952 S.W.2d 145 (1997).

Cited: *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970); *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972); *Hardcastle v. State*, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-106. Civil liability.

(a)(1) Any person who commits the following acts is liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent (6%) per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security:

(A) Offers or sells a security in violation of § 23-42-301, § 23-42-212(b), § 23-42-501(1) or (2), or any rule or order under § 23-42-502 which requires the affirmative approval of sales literature before it is used, or in violation of any condition imposed under § 23-42-403(d), § 23-42-404(g), or § 23-42-404(i); or

(B) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent (6%) per year from the date of disposition.

(b)(1) Any person who purchases a security in violation of §§ 23-42-301, 23-42-307, 23-42-507, and 23-42-508, or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, the seller not knowing of the untruth or omission, and who shall not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him or her, who may sue either at law or in equity to recover either the security or the security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser, upon tender of the consideration the seller received or for damages together with interest at six percent (6%) from the date of purchase plus costs and reasonable attorney's fees.

(2) Damages may be for out-of-pocket losses or for the benefit of the bargain.

(3) Notice of willingness to pay the amount specified in exchange for the security shall constitute valid tender pending acceptance thereof by the purchaser.

(c) Every person who controls a seller liable under subsection (a) of this section or a purchaser liable under subsection (b) of this section; every partner, officer, or director of such a seller or purchaser; every person occupying a similar status or performing a similar function; every employee of such a seller or purchaser who materially aids in the sale; and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with, and to the same extent as, the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section after three (3) years from the effective date of the contract of sale. No person may sue under this section:

(1) If the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment less the amount of any income received on the security, and he or she failed to accept the offer within thirty (30) days of its receipt; or

(2) If the buyer received such an offer before suit and at a time when he or she did not own the security unless he or she rejected the offer in writing within thirty (30) days of its receipt.

(g) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

History. Acts 1959, No. 254, § 22; § 67-1256; Acts 1995, No. 845, § 2; 1997, 1971, No. 131, § 6; 1973, No. 47, § 17; No. 173, § 2; 1999, No. 1225, § 1. 1977, No. 493, §§ 14, 16; A.S.A. 1947,

RESEARCH REFERENCES

Ark. L. Rev. Note, Promissory Demand Notes: Investor Protection or Peril, Arthur Young & Co. v. Reves, 42 Ark. L. Rev. 1075.

U. Ark. Little Rock L.J. Paulson, Survey of Arkansas Law: Business Law, 2 U. Ark. Little Rock L.J. 161.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Survey—Securities, 11 U. Ark. Little Rock L.J. 255.

Annual Survey of Caselaw, Business Law, 25 U. Ark. Little Rock L. Rev. 885.

CASE NOTES

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Construction.

This section is remedial, not punitive, and is to be liberally construed in favor of investors. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Subsection (c) expressly creates two types of secondary liability for securities fraud: control person liability and aiding and abetting liability. *Arthur Young & Co. v. Reves*, 937 F.2d 1310 (8th Cir. 1991), cert. denied, *Ernst & Young v. Reves*, 502 U.S. 1092, 112 S. Ct. 1165 (1992), *aff'd*,

Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Purpose.

It was not the intent of the Arkansas Securities Act to allow the law to be used by sophisticated brokers and dealers for promotional projects, thereby reaping consultant benefits, sales commissions, and other benefits, without fully complying with the requirements of the law. *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979).

Agent.

Former employer did not violate subsection (c) of this section by gathering information and answering questions about an investment opportunity offered by a purchaser of his company; his conduct did not rise to the level of an overt promotion because he did not participate in an investment meeting, and bonus money offered by the former employer was not earmarked for investment purposes. Therefore, he was not acting as an agent of the new company. *Bristow v. Mourot*, 99 Ark. App. 386, 260 S.W.3d 733 (2007).

Applicable Law.

Contract for sale of securities made in Arkansas involving the use of the mails to clear check given by buyer to seller in the transaction was governed both by federal rule and by the civil liability created under this section for purposes of action wherein buyer sought recovery against seller under both for alleged fraud in the transaction. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

A broad-scale, uninsured, unregulated investment program, such as the sale of co-op demand notes, requires a measure of protection for the public such as might be obtained through registration, with civil liability imposed for fraud or misleading statements, the failure to submit oneself to registration, and oversight; therefore, the purchasers of co-op demand notes had a cause of action where they alleged that they were defrauded by being told that the corporation's financial picture was healthier than it was. *Robertson v. White*, 633 F. Supp. 954 (W.D. Ark. 1986). But see *Reves v. Ernst & Young*, 494 U.S. 56, 110 S. Ct. 945, 108 L. Ed. 2d 47 (1990), rehearing denied, 494 U.S. 1092, 110 S. Ct. 1840, 108 L. Ed. 2d 968 (1990).

Burden of Proof.

The fact that the co-op sold unregistered securities makes a prima facie case against the directors; the plaintiffs do not have to prove that the directors knowingly and willfully trespassed the law. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Upon the showing of a sale of a security, the burden shifts to the seller to show that the security was either registered or exempt from the Arkansas Securities Act, or that the buyer is estopped from claiming civil damages. *McMullan v. Molnaird*, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Contribution.

The district court's error in not submitting accounting firm's contribution claim against its client's Board of Directors to the jury, even though the firm might have had a colorable claim for contribution against the directors, created no miscarriage of justice as it was clear that much of the blame for the fraud in the case was properly placed on the firm. *Arthur Young & Co. v. Reves*, 937 F.2d 1310 (8th Cir. 1991), cert. denied, *Ernst & Young v. Reves*, 502 U.S. 1092, 112 S. Ct. 1165 (1992), aff'd, *Reves v. Ernst & Young*, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Disclosures, Misstatements, Etc., of Material Facts.

Plaintiff's omission to disclose the existence of liabilities which did not appear on the balance sheet amounted to an omission to state a material fact. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

Notwithstanding the arm's length nature of the transaction, plaintiff was under a duty not to intentionally or negligently make false representations to defendant with respect to material facts and not to intentionally or negligently fail to disclose material facts to defendant. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

Where bonds given by two defendants had no value and one of the defendants had knowledge of this fact but represented the bonds to be as good as gold and that he wanted to purchase them from the second defendant, who he alleged had furnished them when, in fact, he had furnished them himself, the first defendant was liable under the securities act

for the misrepresentation. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

Where buyer was found to have been the moving party when he exercised option to buy 100% of stock, and he did so against the advice of his accountant and even certain of issuer's employees, buyer failed to demonstrate that he purchased the securities "by means of" any material misstatements on issuer's part. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Misrepresentations or omissions under the Arkansas blue-sky law are actionable if either intentionally or negligently made. *F & M Bank v. Hamilton Hotel Partners Ltd. Partnership*, 702 F. Supp. 1417 (W.D. Ark. 1988).

Duty to Register Securities.

Since the law of this state imposes an absolute duty on directors to register securities prior to sale, blame for not registering securities cannot be shifted to the securities department investigators and enforcers. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Ignorance of a duty to register securities, or to procure their exemption, can in no way excuse the failure to do so; the only conceivable excuse under the "lack of knowledge" defense would be if the director affirmatively believed that the securities were registered, and even then, this section demands that such mistaken knowledge be not the product of negligence, and the director bears the burden of proving that he was not so negligent. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Investment company and related entities were not entitled to summary judgment on the investor's claim under the Arkansas Securities Act, § 23-42-101 et seq., because an issue remained concerning whether or not the securities at issue actually met the requirements for exemption under federal law. *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Investor's motion for summary judgment on the issue of defendants' liability for failure to register under the Arkansas Security Act, § 23-42-101 et seq. was denied because there were issues remaining concerning whether or not defendants were exempt from the state registration

as a "covered security" under federal law; the fact that defendants did not file a Federal Form D did not, by itself, preclude defendants from asserting that the securities they sold were exempt. *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Evidence.

Activities supported finding that defendant materially aided in the sale of securities. *Quick v. Woody*, 295 Ark. 168, 747 S.W.2d 108 (1988).

Accounting firm materially aided in sale of demand notes, where (1) demand notes were sold by means of untrue statements or omissions of material facts based on the firm's audit; (2) the buyers did not know of the untrue statements or the omissions; (3) the untrue statements or the omissions originated with the firm; (4) the firm knew that the statements were being communicated to the buyers, and that they were material, being of the kind and nature that a reasonable person would foreseeably rely on; and (5) the firm knew the statements were false when it made them. *Arthur Young & Co. v. Reves*, 937 F.2d 1310 (8th Cir. 1991), cert. denied, *Ernst & Young v. Reves*, 502 U.S. 1092, 112 S. Ct. 1165 (1992), aff'd, *Reves v. Ernst & Young*, 507 U.S. 170, 113 S. Ct. 1163 (1993).

Evidence held sufficient to show that a transaction between the plaintiff and a corporation was an ordinary secured commercial loan between the parties, not the sale of a security for the purposes of establishing liability under this section. *Carder v. Burrow*, 327 Ark. 545, 940 S.W.2d 429 (1997).

Investors claimed that the notes sold by a trader to the investors were securities and a broker-dealer helped the trader by providing an avenue for further investing the funds the trader had procured from the investors; however, there was nothing in the complaint alleging that the broker-dealer aided, assisted, or was in any way involved in the trader's sale of the promissory notes. Because the complaint was devoid of any allegations which might establish the broker-dealer materially aided the trader's sale of the promissory notes, the district court correctly concluded the investors failed to state a claim against the broker-dealer for a violation of this section. *Benton v. Merrill Lynch & Co.*, 524 F.3d 866 (8th Cir. 2008).

Jurisdiction.

In an action against alleged illegal sale of securities based primarily upon allegations of fraud seeking cancellation of other instruments, contracts and restitution, the equity jurisdiction was properly assumed and exercised, even though the lower court might have had concurrent jurisdiction and some of the relief sought as incident to the action might have been of a purely legal nature. *Titan Oil & Gas, Inc. v. Shipley*, 257 Ark. 278, 517 S.W.2d 210 (1975).

Liability of Partners, Officers, etc.

A defendant was not relieved, by taking over the indemnity from another defendant, from civil liability under the Securities Act for fraud in his own misrepresentation as to the value of worthless bonds. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

A partner who had made misrepresentations concerning the value of corporate bonds given for the purchase of real estate was not released from statutory liability under the Arkansas Securities Act by the release of the second partner from liability to reimburse the sellers of the real estate if the bonds were dishonored. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

The provision of this section that an employee, broker or agent must materially aid in the sale before he becomes liable is not applicable to partners. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

In an action against illegal sale of securities seeking contributions from vice president, the vice president sustained burden of proving that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which their liability was alleged to exist. *Titan Oil & Gas, Inc. v. Shipley*, 257 Ark. 278, 517 S.W.2d 210 (1975).

One cannot delegate responsibility to his lawyer when a securities violation is alleged; one doing so is liable and is left with an action for contribution against his counsellor. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Agent materially aided in the sale of the securities and liability thus attached. *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989).

Major investor who later became the chief financial officer (CFO) of the company was potentially liable to another investor for violation of the Arkansas Securities Act, § 23-42-101 et seq., and was not entitled to summary judgment as the CFO was an officer of the company at a time that the investor gave a portion of his money for investment in the company; further, even before the CFO became an officer, he was a majority shareholder and exerted significant influence over company decisions. *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Limitations of Actions.

Any action on the bond or securities posted in lieu thereof must be brought within statutory period from the date of the sale or act upon which the suit is based. *Wells v. Hill*, 239 Ark. 979, 396 S.W.2d 946 (1965).

Fraudulent concealment of a misrepresentation of the value of the stock sold or traded did not toll the limitations period of subsection (f) of this section. *Martin v. Pacific Ins. Co.*, 245 Ark. 122, 431 S.W.2d 239 (1968).

The limitations period of this section applied to a violation of § 10 of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j) and the limitation began to run when the fraud, with due diligence on the part of the investors, should have been discovered. *Vanderboom v. Sexton*, 422 F.2d 1233 (8th Cir. Ark. 1970).

In the absence of any indication that the legislature intended to make the extensions of the statute of limitations by the 1973 amendment retroactive, the longer statute of limitations was applicable only to causes of action arising after the 1973 act became effective; therefore, a civil action for an illegal sale of securities was barred where the sale was made prior to the effective date of the 1973 amendment, but suit was not commenced until after the expiration of the statute of limitations prior to the 1973 amendment. *Morton v. Tullgren*, 263 Ark. 69, 563 S.W.2d 422 (1978).

The five-year limitation in this section applies to federal securities fraud claims under § 10(b) of the Securities Exchange Act (15 U.S.C. § 77b et seq.). *Pinney v. Edward D. Jones & Co.*, 718 F. Supp. 1419 (W.D. Ark. 1989).

Persons Entitled to Recover.

Buyer of securities was not entitled to relief under this section or under federal rule of section 10 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, where, as a knowledgeable businessman, he entered into speculative stock purchase transaction and recklessly or negligently failed to ascertain the correct financial information concerning the corporation, the securities of which he was purchasing prior to his tendering back the stock to the seller. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

Where there was no evidence that the vice president made any representations to any of the purchasers or that he had any knowledge of the facts by reason of which any contract was made in violation of this section, that did not constitute preponderance of evidence that the vice president was barred from recovery. *Titan Oil & Gas, Inc. v. Shipley*, 257 Ark. 278, 517 S.W.2d 210 (1975).

Remedies.

Party was not entitled to rescission of the agreement nor to full restitution where the agreement was not held to be a security. *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971).

Where an action is brought and sustained both under the Securities Act and common law fraud, punitive damages are recoverable. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

Where no motion to transfer the action brought in equity to law was made, when there was adequate remedy at law, such remedy was waived by the failure to move. *Titan Oil & Gas, Inc. v. Shipley*, 257 Ark. 278, 517 S.W.2d 210 (1975).

Although plaintiff may have been more learned, experienced, and intelligent than the average man, defendant had vast knowledge of and dealt at great length in matters governed by security laws; therefore, where the units defendant sold plaintiff were not registered as required, plaintiff could recover his purchase price, less income received from the units while he held them. *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979).

Findings of district court provided a strong indication that buyer lacked both the sophistication and the inside information that could operate to bar relief to him as an insider and controlling person, and

therefore, equitable defenses against the rescission of the stock sale were not available against him. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Purchasers were not entitled to damages for corporation's failure to register stock; the purchasers could rescind the sale as they still owned the stock, but the corporation's failure to register the stock as promised was not a basis for fraud that also warranted monetary damages. *Peacock v. 21st Century Wireless Group, Inc.*, 285 F.3d 1079 (8th Cir. 2002).

Tender.

Tender held sufficient to permit allowance of an attorney's fee under this section. *Pacific Ins. Co. v. Martin*, 242 Ark. 621, 414 S.W.2d 594 (1967).

Refusal by plaintiff of the tender of a defendant to pay the face amount of the bonds less an amount due from plaintiff did not entitle defendant to a directed verdict where the amount tendered was not sufficient to cover the liability of the defendant for interest and attorney's fees. *Mitchell v. Beard*, 256 Ark. 926, 513 S.W.2d 905 (1974).

Validity of Purchaser's Notes.

The Arkansas Securities Act does not render notes given by a purchaser, in transaction in which seller has violated this section, absolutely void as to holders in due course. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

Cited: *Arkansas Real Estate Co. v. Fullerton*, 232 Ark. 713, 339 S.W.2d 947 (1960); *Central Invs., Inc. v. Polk*, 239 Ark. 165, 388 S.W.2d 381 (1965); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977); *Ballentine v. Ballentine*, 275 Ark. 212, 628 S.W.2d 327 (1982); *LeCroy v. Dean Witter Reynolds, Inc.*, 585 F. Supp. 753 (E.D. Ark. 1984); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark. 320, 691 S.W.2d 853 (1985); *Casali v. Schultz*, 292 Ark. 602, 732 S.W.2d 836 (1987); *Arthur Young & Co. v. Reves*, 856 F.2d 52 (8th Cir. Ark. 1988); *Dingler v. T.J. Raney & Sons*, 708 F. Supp. 1044 (W.D. Ark. 1989); *New Equity Sec. Holders Comm. ex rel. Golden Gulf, Ltd. v. Phillips*, 97 B.R. 492 (E.D. Ark. 1989); *Robertson v. Deloitte, Haskins & Sells*, 732 F. Supp. 979 (E.D. Ark. 1990); *Smith v.*

Leonard, 310 Ark. 782, 840 S.W.2d 167 (Ark. 1992); BNL Equity Corp. v. Pearson, 340 Ark. 351, 10 S.W.3d 838 (2000).

23-42-107. Consent to service of process.

(a)(1)(A) Every applicant for registration under this chapter, every person making a notice filing, and every issuer for whom a registration, exemption from registration, or notice filing is required under this chapter, shall file with the Securities Commissioner, in the form which he or she prescribes by rule, an irrevocable consent appointing the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(B) However, this shall not apply to applicants, persons making notice filings, and issuers who have a place of business in Arkansas, have qualified to do business in Arkansas with the Secretary of State, and have either an agent for service of process or have executed a consent appointing the Secretary of State agent for service of process, or who may otherwise be subject to service of process.

(2) A person who has filed a consent appointing the commissioner in connection with a previous registration or notice filing need not file another when renewing a registration or notice filing.

(3) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(A) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him or her, immediately sends notice of the service and a copy of the process by mail with proof of service to the defendant or respondent at his or her last address on file with the commissioner; and

(B) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b)(1) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder and he or she has not filed a consent to service of process under subsection (a) of this section, and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him or her personally.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless:

(A) The plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by mail with proof of service to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice; and

(B) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(c) When process is served under this section, the court, or the commissioner in a proceeding before him or her, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

History. Acts 1959, No. 254, § 26; 19; A.S.A. 1947, § 67-1260; Acts 1997, No. 1963, No. 479, § 5; 1983, No. 836, §§ 18, 173, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

CASE NOTES

Restricted Consent.

Defendant corporation's consent to service in Arkansas restricted to suits and actions commenced against it for any cause arising out of a sale or offer of sale by it was not broad enough to cover plaintiffs' cause of action based on fraud by virtue of forgery of stock certificates and the alleged resulting breach of defendant's fiduciary duty in cancelling or transfer-

ring the stock represented by such certificates, which alleged acts occurred after the completed sale, outside Arkansas, and before plaintiffs became residents of Arkansas. *Billings v. Investment Trust*, 309 F.2d 681 (8th Cir. 1962) (decision under prior law).

Cited: *Billings v. Investment Trust*, 309 F.2d 681 (8th Cir. 1962).

23-42-108. Rights and remedies cumulative.

The rights and remedies provided by this chapter are in addition to any other rights that may exist at law or in equity.

History. Acts 1959, No. 254, § 22; 1977, No. 493, § 15; A.S.A. 1947, § 67-1256.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Paulson, Survey of Arkansas Law: Business Law, 2 U. Ark. Little Rock L.J. 161.

Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

CASE NOTES

Cited: Arkansas Real Estate Co. v. Fullerton, 232 Ark. 713, 339 S.W.2d 947 (1960); Central Invs., Inc. v. Polk, 239 Ark. 165, 388 S.W.2d 381 (1965); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); LeCroy v. Dean Witter Reynolds, Inc., 585 F. Supp. 753 (E.D. Ark. 1984); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985); Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987).

23-42-109. Waiver of compliance void.

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order under this chapter is void.

History. Acts 1959, No. 254, § 22; A.S.A. 1947, § 67-1256.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Paulson, Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83. Ark. Little Rock L.J. 161.

CASE NOTES

Cited: Arkansas Real Estate Co. v. Fullerton, 232 Ark. 713, 339 S.W.2d 947 (1960); Central Invs., Inc. v. Polk, 239 Ark. 165, 388 S.W.2d 381 (1965); Long v. Mabry, 250 Ark. 947, 470 S.W.2d 319 (1971); Schultz v. Rector-Phillips-Morse, Inc., 261 Ark. 769, 552 S.W.2d 4 (1977); Ballentine v. Ballentine, 275 Ark. 212, 628 S.W.2d 327 (1982); LeCroy v. Dean Witter Reynolds, Inc., 585 F. Supp. 753 (E.D. Ark. 1984); J & C Inv. v. Mid-South Drilling, Inc., 286 Ark. 320, 691 S.W.2d 853 (1985); Casali v. Schultz, 292 Ark. 602, 732 S.W.2d 836 (1987); Tanenbaum v. Agri-Capital, Inc., 885 F.2d 464 (8th Cir. 1989).

23-42-110. False or misleading statements unlawful.

It is unlawful for any person to make or cause to be made, in any document filed with the Securities Commissioner or the commissioner's designee or in any proceeding under this chapter, any statement which is, at the time in light of the circumstances under which it is made, false or misleading in any material respect.

History. Acts 1959, No. 254, § 16; 1983, No. 836, § 16; A.S.A. 1947, § 67-1250.

CASE NOTES

License Applications.

On license application for securities agent, failure to disclose correct employment history, previous revocation of license and misdemeanor conviction consti-

tutes violation. Selig v. Novak, 256 Ark. 278, 506 S.W.2d 825 (1974).

Cited: Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

SUBCHAPTER 2 — ADMINISTRATION

SECTION.

- 23-42-201. Administration by Securities Commissioner — Conflicts of interest.
- 23-42-202. Delegation of authority by Securities Commissioner.
- 23-42-203. Confidentiality of information or proceedings generally.
- 23-42-204. Rules, forms, and orders of Securities Commissioner.
- 23-42-205. Investigations.
- 23-42-206. Records of Securities Commissioner generally — Interpretive opinions.
- 23-42-207. Public inspection of records — Exceptions.

SECTION.

- 23-42-208. Cooperation with other regulatory agencies.
- 23-42-209. Injunction, mandamus, or other ancillary relief.
- 23-42-210. Judicial review.
- 23-42-211. Disposition of fees.
- 23-42-212. Registration or availability of exemption not construed as approval by Securities Commissioner — Inconsistent representation.
- 23-42-213. Disposition of fines — Investor Education Fund.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1973, No. 471, § 8: July 1, 1973.

Acts 1975, No. 844, § 16: Apr. 4, 1975.

Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall

become effective from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Com-

missioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1993, Nos. 659 and 850, § 9: Mar. 24, 1993. Emergency clauses provided: “It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state’s ability to continue the duties, responsibilities, and functions of the State Securities Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and

effect from and after its passage and approval.”

Acts 2011, No. 294, § 11: July 1, 2011. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2011 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2011 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2011.”

RESEARCH REFERENCES

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 86 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 222 et seq.

23-42-201. Administration by Securities Commissioner — Conflicts of interest.

(a) This chapter shall be administered by the Securities Commissioner, who shall be appointed by the Governor and who shall serve at the pleasure of the Governor.

(b) No person shall serve in the State Securities Department in any capacity who engages in any activities regulated under the provisions of this chapter.

History. Acts 1959, No. 254, §§ 18, 30; 1961, No. 248, § 10; 1973, No. 471, § 2; A.S.A. 1947, §§ 67-1252, 67-1262.

Publisher’s Notes. The provisions of this chapter were originally administered by the Securities Division of the State Bank Department. Acts 1971, No. 38, § 16, transferred both the Banking and Securities Divisions of the State Bank Department to the Department of Commerce. Acts 1973, No. 471, separated the Securities Division from the State Bank Department and established the State Securities Department within the Depart-

ment of Commerce. The State Securities Department retained all powers assigned by law to the Securities Division including the administration of the laws governing securities, credit unions, savings and loan associations, funeral expense organizations, and the sale of checks. Acts 1983, No. 691, abolished the Department of Commerce and provided, in § 3, that the State Securities Department should function as an independent agency the same as if it had never been placed in the Department of Commerce.

23-42-202. Delegation of authority by Securities Commissioner.

(a) The Securities Commissioner may delegate to any person under any conditions which he or she deems appropriate any responsibilities of the commissioner as set forth in this chapter, the Credit Union Act, § 23-35-101 et seq., the Savings and Loan Act, § 23-37-101 et seq., or any other act for which the commissioner is responsible.

(b) The commissioner, subject to any restrictions which he or she in his or her discretion deems appropriate, may delegate to any person the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary, or of whatever character, vested by this chapter in the commissioner.

History. Acts 1959, No. 254, § 19; A.S.A. 1947, § 67-1253; Acts 1995, No. 1977, No. 493, § 11; 1979, No. 754, § 4; 845, § 3; 1997, No. 173, § 5.

CASE NOTES**Constitutionality.**

There is nothing in the Constitution of the United States which prohibits a state from conferring powers on the bank commissioner; and former act did not vest bank commissioner with arbitrary power since provision was made for proceedings

in the chancery court. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

Cited: *Madden v. United States As-socs.*, 40 Ark. App. 143, 844 S.W.2d 374 (1992).

23-42-203. Confidentiality of information or proceedings generally.

(a) It is unlawful for the Securities Commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public.

(b) Neither the commissioner nor any of his or her officers or employees shall disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or in any judicial proceedings when the information is not privileged.

(c) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

(d) Nothing herein shall prevent the commissioner or any officers or employees of the State Securities Department from sharing with state or federal law enforcement authorities, other state or federal regulatory authorities, or self-regulatory organizations authorized by law any information which they may have or obtain in aid of the enforcement of this chapter or any other securities act or the criminal provisions of any laws.

(e) The commissioner, in his or her discretion, shall determine when an administrative proceeding shall be public.

History. Acts 1959, No. 254, §§ 18, 24; A.S.A. 1947, §§ 67-1252, 67-1258; Acts 1963, No. 479, § 4; 1985, No. 939, § 9; 1995, No. 845, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

CASE NOTES

Cited: Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

23-42-204. Rules, forms, and orders of Securities Commissioner.

(a) The Securities Commissioner, from time to time, may make, amend, and rescind any rules, forms, and orders which are necessary to carry out the provisions of this chapter. This includes rules and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his or her jurisdiction and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest, or for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of this chapter.

(c)(1) In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states, individually and as a group represented by the North American Securities Administrators Association, with the Securities and Exchange Commission, and with self-regulatory organizations with a view to effectuating the policy of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, rules, and reports wherever practicable.

(2) When the commissioner incorporates by reference in the rules and forms of the commissioner a form, rule, or portion thereof in accordance with this subsection, any change in that form, rule, or portion thereof shall become part of the rules and forms of the commissioner, unless the commissioner shall by order decline to accept the change within thirty (30) days of its adoption or promulgation.

(d)(1) The commissioner may by rule or order prescribe:

(A) The form and content of financial statements required under this chapter;

(B) The circumstances under which consolidated financial statements shall be filed; and

(C) Whether any required financial statements shall be certified by independent or certified public accountants.

(2) All financial statements shall be prepared in accordance with generally accepted accounting practices.

(e) All rules and forms of the commissioner shall be published.

(f) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(g)(1) The commissioner may by order require an issuer, broker-dealer, or agent to obtain from the purchaser, in any initial sale of a security effected by means of a prospectus, a written statement signed by the purchaser that he or she had received a copy of the prospectus prior to his or her purchase of the security.

(2) The order may require the issuer, broker-dealer, or agent to keep a copy of the written statement at the principal office of the issuer, broker-dealer, or agent, subject to inspection by the commissioner or his or her agent for a period not to exceed two (2) years.

(3) This subsection shall not be applicable to the subsequent sale of the same securities to the same purchaser.

History. Acts 1959, No. 254, § 24; 1258; Acts 1995, No. 845, § 5; 1997, No. 1963, No. 479, § 4; A.S.A. 1947, § 67- 173, § 6.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

CASE NOTES

Cited: *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

23-42-205. Investigations.

(a) The Securities Commissioner, in his or her discretion, may:

(1) Make any public or private investigations within or outside of this state which he or she deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter;

(2) Require or permit any person to file a statement in writing, under oath, or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning any violation of this chapter or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books,

papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c)(1) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may order the person to appear before the commissioner or the officer designated by the commissioner to produce evidence or testify concerning the matter under investigation or in question.

(2) Failure to obey the order may be punished as contempt of court.

(d)(1) No person is excused from attending and testifying, or from producing any document or record, before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him or her, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture. However, no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(2) However, no provision of this chapter shall be construed to require, or to authorize the commissioner to require, any investment adviser engaged in rendering investment advisory services to disclose the identity, investments, or affairs of any client of the investment adviser, except insofar as the disclosure may be necessary or appropriate in a particular proceeding or investigation having as its objective the enforcement of a provision of this chapter.

History. Acts 1959, No. 254, § 19; A.S.A. 1947, § 67-1253; Acts 2009, No. 462, § 1.

Amendments. The 2009 amendment, in (c), subdivided the subsection, substituted “Pulaski County Circuit Court” for “Chancery Court of Pulaski County” in (c)(1), and made minor stylistic changes.

CASE NOTES

Constitutionality.

There is nothing in the Constitution of the United States which prohibits a state from conferring powers on the bank commissioner; and former act did not vest

bank commissioner with arbitrary power since provision was made for proceedings in the chancery court. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

23-42-206. Records of Securities Commissioner generally — Interpretive opinions.

(a)(1) A document is filed when it is received by the Securities Commissioner or when the commissioner receives notice from his or her designee that a document was received by the designee.

(2) The disposition of any document received by the commissioner shall be in accordance with the Arkansas State Records Management and Archives Act of 1995, § 13-4-101 et seq. [repealed].

(3) A document received by the commissioner's designee may be:

(A) Destroyed after the reproduction of the document by photograph, microphotograph, or electronic means of a permanent nature;

(B) Transferred to a permanent storage location maintained by the Central Registration Depository with the Financial Industry Regulatory Authority, the Securities Registration Depository with the North American Securities Administrators Association, or such other central depository system as may be determined by the commissioner; or

(C) Transferred to the commissioner to be disposed of in the manner of a document received by the commissioner.

(b) The commissioner shall keep a register of all notice filings, applications for registration, and registration statements which are, or have ever been, effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection.

(c) The commissioner may rely upon and coordinate with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Municipal Securities Rulemaking Board, the North American Securities Administrators Association, and any other securities regulatory agencies for the proper maintenance of certain common registrations, records, and other documents maintained by the other regulatory agencies.

(d) Upon request, and at reasonable charges which he or she prescribes, the commissioner shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions.

History. Acts 1959, No. 254, § 25; 1975, No. 844, § 13; 1977, No. 493, §§ 17, 18; 1983, No. 836, § 17; A.S.A. 1947, § 67-1259; Acts 1995, No. 845, §§ 6, 7; 1997, No. 173, § 7; 2009, No. 462, §§ 2, 3.

Amendments. The 2009 amendment substituted "Financial Industry Regulatory Authority" for "National Association of Securities Dealers" in (a)(3)(B) and (c); and made minor stylistic changes.

23-42-207. Public inspection of records — Exceptions.

(a)(1) Unless otherwise specified below, all information filed with the Securities Commissioner shall be available for public inspection.

(2) The information contained in or filed with any registration statement, notice filing, application, or report may be made available to the public under any rules which the commissioner prescribes.

(b) Except for reasonable segregable portions which are public information, the commissioner shall not publish or make available the following information:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation;

(2) Interagency or intraagency memoranda or letters, including generally records which reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff, and, specifically, reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an inspection of the books or records of any person whose affairs are regulated by the commissioner, or prepared otherwise in the course of an examination or investigation or related litigation conducted by or on behalf of the commissioner, except those which by law would routinely be made to a party other than an agency in litigation with the commissioner;

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including those concerning all employees of the State Securities Department and those concerning persons subject to regulation by employees of broker-dealers reported to the commissioner pursuant to the department's rules concerning registration of broker-dealers and agents;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, or disclose the identity of a confidential source.

(B) In a particular case the commissioner may also withhold investigatory records that would constitute an unwarranted invasion of personal privacy, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel.

(C) Investigatory records include all documents, records, transcripts, correspondence, and related memoranda and work product concerning examinations and other investigations and related litigation as authorized by law, which pertain to or may disclose the possible violations by any person of any provision of any of the statutes, rules, or regulations administered by the commissioner, and all written communications from or to any person confidentially complaining or otherwise furnishing information respecting the possible violations, as well as all correspondence and memoranda in connection with the confidential complaints or information;

(5) Information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of any

agency responsible for the regulation or supervision of financial institutions;

(6)(A) Financial records of broker-dealers, investment advisers, agents, or representatives obtained during or as a result of an examination by the department.

(B) However, when those records are required by this chapter to be filed with the department as part of a notice filing, registration, annual renewal, or otherwise, the records, including financial statements prepared by certified public accountants, shall be public unless sections of the information are bound separately and marked privileged and confidential by the broker-dealer, investment adviser, agent, or representative upon its submission, in which case it shall be deemed nonpublic until ten (10) days after the commissioner has given the broker-dealer, investment adviser, agent, or representative notice that an order will be entered deeming the material public.

(C) If the broker-dealer, investment adviser, agent, or representative believes the commissioner's order is incorrect, the broker-dealer, investment adviser, agent, or representative may seek an injunction from the Pulaski County Circuit Court ordering the department to hold the information as nonpublic pending a final order of a court of competent jurisdiction if the order of the commissioner is appealed pursuant to applicable law;

(7) Trade secrets obtained from any person; and

(8) Any other records which under the Freedom of Information Act of 1967, § 25-19-101 et seq., or other laws are required to be closed to the public and are not deemed open to the public inspection.

History. Acts 1959, No. 254, § 25; 1985, No. 939, § 10; A.S.A. 1947, § 67-1259; Acts 1995, No. 845, § 8; 1997, No. 173, § 8; 2009, No. 462, § 4.

Amendments. The 2009 amendment substituted "Pulaski County Circuit Court" for "Circuit Court or Chancery Court of Pulaski County" in (b)(6)(C).

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 741.

23-42-208. Cooperation with other regulatory agencies.

(a) The Securities Commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in the Central Registration Depository with the Financial Industry Regulatory Authority, the Securities Registration Depository with the North American Securities Administrators Association, such other central depository system as determined by the commissioner, or the other agencies or authorities.

(b) It is the intent of this section that the commissioner be provided the authority to reduce duplication of filings, reduce administrative

costs, and establish uniform procedures, forms, and administration with the states and federal authorities.

(c) The commissioner may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the North American Securities Administrators Association, or other similar authorities.

(d) The commissioner may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.

History. Acts 1959, No. 254, § 4; 1979, No. 754, § 5; 1983, No. 836, § 8; A.S.A. § 67-1238; Acts 1995, No. 845, § 9; 2009, No. 462, §§ 5, 6.

Amendments. The 2009 amendment substituted “Financial Industry Regulatory Authority” for “National Association of Securities Dealers” in (a) and (c).

23-42-209. Injunction, mandamus, or other ancillary relief.

(a)(1)(A) Whenever it appears to the Securities Commissioner, upon sufficient grounds or evidence satisfactory to the commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, except the provisions of § 23-42-509, or any rule or order under this chapter, including any order issued under § 23-42-509, he or she may summarily order the person to cease and desist from the act or practice.

(B) Upon the entry of the order, the commissioner shall promptly notify the person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order.

(2)(A) A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the commissioner within thirty (30) days of the date of the entry of the order, or if ordered by the commissioner.

(B) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

(C) After notice and an opportunity for a hearing, the commissioner may:

(i) Affirm, modify, or vacate the cease and desist order under subdivision (a)(1)(A) of this section; and

(ii) For a violation of this chapter other than a violation of § 23-42-509, by order, levy a fine not to exceed:

(a) Ten thousand dollars (\$10,000) for each violation or an amount equal to the total amount of money received in connection with each violation; or

(b) If a victim of a violation is sixty-five (65) years of age or older:

(1) Twenty thousand dollars (\$20,000) for each violation; or

(2) Two (2) times the amount of money received in connection with each violation.

(3) The commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates this chapter and to enforce compliance with this chapter or any rule or order under this chapter:

(A) After an order is issued under subdivision (a)(1) or subdivision (a)(2) of this section; or

(B) Without issuing an order under subdivision (a)(1) or subdivision (a)(2) of this section.

(4) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

(5) The court may not require the commissioner to post a bond.

(b) The commissioner may also obtain upon proper showing any other ancillary relief in the public interest, including without limitation:

(1) The appointment of a receiver, temporary receiver, or conservator;

(2) A declaratory judgment;

(3) An accounting;

(4) Disgorgement of profits;

(5) Restitution; or

(6) The assessment of a fine in an amount of not more than the total amount of money received in connection with a violation of this chapter.

(c) Nothing herein shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 20; 1963, No. 479, § 3; 1979, No. 754, § 6; A.S.A. 1947, § 67-1254; Acts 1995, No. 845, § 10; 1997, No. 173, § 9; 2009, No. 462, § 7; 2009, No. 534, § 2; 2011, No. 339, § 4.

Amendments. The 2009 amendment by No. 462 rewrote (a)(3)(A), which read: “The commissioner may, after issuance of an order as set forth above, apply to the Chancery Court of Pulaski County to temporarily or permanently enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.”

The 2009 amendment by No. 534 rewrote (a)(2)(C), which read: “If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may affirm, modify, or vacate the order.”

The 2011 amendment subdivided (b); in the present introductory language of (b), substituted “obtain” for “seek and the appropriate court shall,” deleted “grant” following “showing,” and added “without limitation”; and substituted “a violation of this chapter” for “any violation, or other relief as may be appropriate in the public interest” in (b)(6).

23-42-210. Judicial review.

(a)(1) Any person aggrieved by a final order of the Securities Commissioner may obtain a review of the order in any state court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these copies have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b)(1) The findings of the commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

(2) If either party applies to the court for leave to adduce additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing, in any manner and upon any conditions which the court considers proper. The commissioner may modify his or her findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(c) The judgment of the court is final, subject to review by the Supreme Court.

(d) The commencement of proceedings under subsection (a) of this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History. Acts 1959, No. 254, § 23; 1961, No. 248, § 9; A.S.A. 1947, § 67-1257.

CASE NOTES

Cited: Selig v. Novak, 256 Ark. 278, 506 S.W.2d 825 (1974).

23-42-211. Disposition of fees.

(a)(1) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Securities Department Fund".

(2) The fund shall be used for the maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law.

(3) The fund shall consist of those portions of fees designated for deposit into the fund pursuant to §§ 23-42-304(a)(2), (a)(4), and (a)(5) and 23-42-404(b)(1) and such other funds as may be provided by law or regulatory action.

(4) Notwithstanding subdivision (a)(3) of this section, no more than two million dollars (\$2,000,000) shall be deposited into the fund in any one (1) fiscal year until July 1, 2013, at which time this limitation shall expire.

(b) The department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for

services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1959, No. 254, § 30; 1961, No. 248, § 10; 1973, No. 471, § 3; A.S.A. 1947, § 67-1262; Acts 1993, No. 659, §§ 1, 5; 1993, No. 850, §§ 1, 5; 2003, No. 759, § 1; 2009, No. 534, § 3; 2011, No. 294, § 8.

Amendments. The 2009 amendment inserted “and (a)(5)” in (a)(3), and made related changes.

The 2011 amendment, in (a)(4), substituted “two million dollars (\$2,000,000)” for “one million dollars (\$1,000,000),” substituted “July 1, 2013” for “July 1, 2011,” and deleted “unless extended” at the end.

23-42-212. Registration or availability of exemption not construed as approval by Securities Commissioner — Inconsistent representation.

(a)(1) Neither the fact that an application for registration, a notice filing, or a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the Securities Commissioner that any document filed under this chapter is true, complete, and not misleading.

(2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

History. Acts 1959, No. 254, § 17; A.S.A. 1947, § 67-1251; Acts 1997, No. 173, § 10.

CASE NOTES

Cited: Hardcastle v. State, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-213. Disposition of fines — Investor Education Fund.

(a) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the “Investor Education Fund”.

(b) Except as provided by subsection (c) of this section, all fines imposed and collected or moneys collected in lieu of a fine under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be

administered by the Securities Commissioner for the following purposes:

(1) To inform and educate the public regarding investments in securities in order to help investors and potential investors:

- (A) Evaluate their investment decisions;
- (B) Protect themselves from unfair, inequitable, or fraudulent offerings;
- (C) Choose their broker-dealers, agents, and investment advisers more carefully;
- (D) Be alert for false or misleading advertising or other harmful practices; and
- (E) Know their rights as investors; and

(2) To pay for:

- (A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;
- (B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);
- (C) Costs of equipment necessary or useful for such presentations; and
- (D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state’s public school system.

(c)(1) The Investor Education Fund shall be funded initially by the transfer of one hundred thousand dollars (\$100,000) from the Securities Department Fund.

(2) All funds in excess of one hundred fifty thousand dollars (\$150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund.

History. Acts 2003, No. 759, § 2.

SUBCHAPTER 3 — BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS

- SECTION.
- 23-42-301. Registration required — Unlawful acts — Supervision requirements.
 - 23-42-302. Registration procedure.
 - 23-42-303. Minimum net capital requirement.
 - 23-42-304. Filing fees — Rules and regulations.
 - 23-42-305. Corporate surety bonds — Alternatives.

- SECTION.
- 23-42-306. Records and reports — Examinations.
 - 23-42-307. Unlawful acts by investment advisers.
 - 23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the filing fee for filing a registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act; that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be achieved; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation

of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 806, § 25: Mar. 28, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing laws determining the authority of the Arkansas Securities Commissioner provide a duplicity of regulation which creates undue burden upon mortgage loan companies and loan brokers while at the same time not being in the public interest, and it is found that this Act will eliminate much of such duplicity and provide adequate protection of the public; therefore, an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect from and after its passage and approval."

Acts 1979, No. 6, § 5: Jan. 30, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws governing the bonding of registered broker-dealers in the State of Arkansas creates an undue hardship upon those broker-dealers who operate as sole proprietor, and that the immediate passage of this Act is necessary to clarify and alleviate the existing laws in this respect. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Commissioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 449, § 4: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the increased demand on the State Securities office has resulted in an immediate need for additional revenues to provide the services demanded from that office; that this act provides some of those needed revenues by means of increasing certain fees; and that this Act should go into effect immediately in order to generate additional revenues as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of

the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 659 and 850, § 9: Mar. 24, 1993. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Securities Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995 (1st Ex. Sess.), No. 14, § 5: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that requirements for resident principals established in Act 845 of 1995 operate as a hardship on certain securities agents in the State who work as independent contractors; that the immediate effectiveness of this act is essential in order to alleviate this undue burden and permit these productive member of our society to continue earning their livelihood while still implementing measures needed to protect the integrity of the securities industry. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 15 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 216 et seq.

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

23-42-301. Registration required — Unlawful acts — Supervision requirements.

(a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

(b)(1) It is unlawful for a registered broker-dealer or issuer to employ an unregistered agent except a nonresident agent who is registered by

any other state securities administrator and who effects transactions in this state exclusively with registered broker-dealers.

(2) The registration of an agent is not effective during a period when he or she is not associated with a particular:

- (A) Broker-dealer registered under this chapter; or
- (B) Issuer.

(3)(A) A broker-dealer or issuer shall notify promptly the Securities Commissioner or the commissioner's designee if an agent begins or terminates:

- (i) An association with a broker-dealer or issuer; or
- (ii) The activities that make him or her an agent of the broker-dealer or issuer.

(B) If an agent terminates or withdraws his or her registration with a broker-dealer or issuer, a subsequent application by the agent for registration is treated as:

- (i) An initial registration; and
- (ii) A notification by the agent of termination or withdrawal of the previous registration or application.

(4) The commissioner may by rule establish provisions for concurrent registration with more than one (1) broker-dealer or issuer.

(c) It is unlawful for a person to transact business in this state as an investment adviser or representative without first being registered under this chapter unless the person:

(1) Is registered as an investment adviser with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, and has filed with the commissioner or the commissioner's designee a notice filing consisting of:

- (A) A copy of documents on file with the Securities and Exchange Commission that the commissioner may by rule or order prescribe;
- (B) The fee set forth in § 23-42-304(a)(3); and
- (C) A consent to service of process;

(2) Is a "representative" of an investment adviser registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, and has no place of business located in this state; or

(3) Is not registered as an investment adviser with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011, because the person is not an investment adviser under section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2011.

(d)(1) A notice filing required by subdivision (c)(1) of this section becomes effective upon receipt by the commissioner or the commissioner's designee of the notice filing, consent to service of process, and the appropriate fee.

(2)(A) The registration and notice filing required by subdivision (c)(1) of this section expires December 31 of each year unless renewed.

(B) Effective upon the commissioner's receipt of notification, an investment adviser may terminate the investment adviser's notice filing under subdivision (c)(1) of this section by providing the commissioner notification of the termination.

(e) A broker-dealer or investment adviser shall not conduct business from a branch office within this state unless the branch office is registered under this chapter.

(f)(1) A broker-dealer shall establish, maintain, and enforce a system to supervise the activities of its agents and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) A broker-dealer's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (f)(1) of this section; and

(B) Appointment of at least one (1) agent of the broker-dealer who shall meet the qualifications and carry out the supervisory responsibilities of the broker-dealer for activities in this state under rules established by the commissioner.

(g)(1) An investment adviser shall establish, maintain, and enforce a system to supervise the activities of its representatives and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) An investment adviser's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (g)(1) of this section; and

(B) Appointment of at least one (1) representative of the investment advisor who shall meet the qualifications and carry out the supervisory responsibilities of the investment advisor for activities in this state under rules established by the commissioner.

History. Acts 1959, No. 254, § 3; 1961, No. 248, § 1; 1973, No. 47, §§ 1, 2; 1975, No. 844, §§ 1, 5; 1977, No. 493, § 1; 1977, No. 806, § 24A; 1983, No. 836, §§ 1-4; 1985, No. 939, § 1; A.S.A. 1947, § 67-1237; Acts 1995, No. 845, § 11; 1995 (1st Ex. Sess.), No. 14, § 1; 1997, No. 173, § 11; 2009, No. 462, § 8; 2009, No. 534, § 4; 2011, No. 338, § 2.

Amendments. The 2009 amendment by No. 462 inserted "15 U.S.C. § 80b-1 et. seq., as it existed on January 1, 2009" in four places in (c); inserted "or the commis-

sioner's designee" in (c)(1) and (d)(1); and made minor stylistic changes.

The 2009 by No. 534 amendment added (f).

The 2011 amendment subdivided (b)(2); rewrote (b)(3); subdivided (c)(1); substituted "January 1, 2011" for "January 1, 2009" in (c)(1), (c)(2), and (c)(3); substituted "not an" for "exempted from the definition of" in (c)(3); rewrote (d)(2)(B); deleted (e) and redesignated former (f) as (e); and added present (f) and (g).

U.S. Code. The Investment Company

Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80b-1 et seq.

CASE NOTES

ANALYSIS

Dealer.

Statute of Limitations.

Dealer.

An isolated sale of an interest in an oil and gas lease by the owner does not constitute the owner a broker-dealer in violation of this section. *Shepherd v. State*, 246 Ark. 744, 439 S.W.2d 627 (1969).

Statute of Limitations.

In the absence of any indication that the legislature intended to make the extension of the statute of limitations by the

1973 amendment to § 23-42-106 retroactive, the longer statute of limitations was applicable only to causes of action arising after the 1973 act became effective; therefore, a civil action for an illegal sale of securities was barred where the sale was made prior to the enactment of the 1973 amendment, but suit was not commenced until after the expiration of the statute of limitations in effect prior to the 1973 amendment. *Morton v. Tullgren*, 263 Ark. 69, 563 S.W.2d 422 (1978).

23-42-302. Registration procedure.

(a)(1) A broker-dealer, agent, investment adviser, representative, or branch office may obtain an initial or renewal registration by filing with the Securities Commissioner or the commissioner's designee an application and fee, together with a consent to service of process under § 23-42-107(a).

(2) The commissioner may by order approve a limited registration with such limitations, qualifications, or conditions as the commissioner deems appropriate.

(b) The commissioner may by rule set forth the form and content of the application and establish a procedure for renewal registration or initial registration whereby registration may become effective prior to the filing of a completed application or fee.

(c) The application shall contain whatever information the commissioner by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications, disciplinary history, and business history of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and history of any partner, officer, director, person occupying a similar status or performing similar functions, or any persons directly or indirectly controlling the broker-dealer or investment adviser;

(4) Any investigation, proceeding, order, injunction, arrest, or conviction of any felony or misdemeanor; and

(5) The applicant's financial condition and history.

(d) The commissioner may provide for a written examination to be taken by each class of applicants to be used as one (1) of the bases in determining an applicant's qualifications to be registered.

(e) The commissioner is authorized to conduct an investigation in order that he or she may determine the fitness of any applicant. Each

applicant shall pay to the commissioner an investigation fee, and the amount of each fee shall be determined on the same basis as is the examination fee required of broker-dealers under § 23-42-306(d).

(f) If no denial order is in effect or no proceeding is pending under § 23-42-308, registration becomes effective on the thirtieth day after the application is completed. The commissioner may determine an earlier effective date upon review of the application.

(g) Applications which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the application and afforded a reasonable opportunity to correct such deficiencies.

(h) A registered broker-dealer, investment adviser, or person required to make a notice filing pursuant to § 23-42-301(c)(1) may file an application for registration or notice filing of a successor, whether or not the successor is then in existence. The application or notice filing shall comply with the requirements for an initial application or notice filing.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 8; 1975, No. 844, § 5; 1983, No. 836, §§ 5, 6; A.S.A. 1947, § 67-1238; Acts 1995, No. 845, § 12; 1997, No. 173, § 12; 2009, No. 462, § 9; 2009, No. 534, § 5.

Amendments. The 2009 amendment by No. 462 deleted the last sentence in (d), which read: “Any agent, broker-dealer, investment adviser, or representative shall be exempt from examination, except

such part as relates to this chapter, if he was engaged in the securities business in Arkansas on July 1, 1959, and was registered with the National Association of Securities Dealers or the federal Securities and Exchange Commission.”

The 2009 amendment by No. 534, in (a), inserted (a)(2), redesignated the remaining text accordingly, inserted “or branch office” in (a)(1), and made related and minor stylistic changes.

CASE NOTES

ANALYSIS

Applicability.
Fraud not Shown.
Grounds for Denial.

Applicability.

Subsection (e) of this section applies to applicants and registrants as defined within the Securities Act and is inapplicable to persons who only train applicants to take the broker-dealer examination. *Bell v. Investment Training Inst., Inc.*, 271 Ark. 663, 609 S.W.2d 919 (1981).

Fraud not Shown.

Inconsistent recitals did not show that the whole scheme was fraudulent or that

the trustee practiced a fraud on the Bank Commissioner (now Securities Commissioner) to secure a permit to do business. *Palmer v. Taylor*, 168 Ark. 127, 269 S.W. 996 (1925) (decision under prior law).

Grounds for Denial.

The Bank Commissioner (now Securities Commissioner) improperly refused a dealer’s license to sell stock in a common-law trust on the ground that the laws of the state did not authorize such an association. *Coleman v. McKee*, 162 Ark. 90, 257 S.W. 733 (1924) (decision under prior law).

23-42-303. Minimum net capital requirement.

(a) The Securities Commissioner shall require a minimum net capital for registered broker-dealers in such amount as he or she may by rule prescribe and for registered investment advisers in the amount of twelve thousand five hundred dollars (\$12,500).

(b) However, subsection (a) of this section shall not apply to any registered investment adviser which maintains its principal place of business in a state other than Arkansas that:

(1) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(2) Is in compliance with the applicable net capital requirements of the state in which it maintains its principal place of business.

History. Acts 1959, No. 254, § 4; 1961, 844, § 3; A.S.A. 1947, § 67-1238; Acts No. 248, § 2; 1973, No. 47, § 3; 1975, No. 1995, No. 845, § 13; 1997, No. 173, § 13.

23-42-304. Filing fees — Rules and regulations.

(a) Every applicant for initial or renewal registration and every person making a notice filing as required by § 23-42-301(c) shall pay a filing fee of:

(1) Three hundred dollars (\$300) in the case of a broker-dealer;

(2) Seventy-five dollars (\$75.00) in the case of an agent, of which twenty-five dollars (\$25.00) shall be designated as special revenues and shall be deposited into the Securities Department Fund;

(3) Three hundred dollars (\$300) in the case of an investment adviser;

(4) Seventy-five dollars (\$75.00) in the case of a representative, of which twenty-five dollars (\$25.00) shall be designated as special revenues and shall be deposited into the fund; and

(5) Fifty dollars (\$50.00) in the case of a branch office, of which the entire amount shall be designated as special revenues and deposited into the fund.

(b) After an application for registration has been processed, in whole or in part, any filing fee shall be nonrefundable.

(c) The State Securities Department is hereby authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and § 23-42-404 and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1975, No. 844, § 2; 1985, No. 939, § 2; A.S.A. 1947, § 67-1238; Acts 1987, No. 449, § 1; 1993, No. 659, §§ 2, 5; 1993, No. 850, § 2, 5; 1995, No. 845, § 14; 1997, No. 173, § 14; 2009, No. 534, § 6.

Amendments. The 2009 amendment inserted (a)(5) and made related and minor stylistic changes.

23-42-305. Corporate surety bonds — Alternatives.

(a)(1) The Securities Commissioner shall require registered broker-dealers, investment advisers, and an agent for the issuer to maintain a bond in such form and amount as he or she may by rule prescribe.

(2) However, this subsection does not apply to any registered investment adviser that maintains its principal place of business in a state other than Arkansas that:

(A) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(B) Is in compliance with the applicable bonding requirements of the state in which it maintains its principal place of business.

(b) The following apply to those bonds required to be posted with the commissioner under subsection (a) of this section:

(1) The total liability of the surety to all persons, cumulative or otherwise, shall not exceed the amounts specified in the bond;

(2) Every bond shall provide that a suit shall not be maintained to enforce any liability on the bond unless brought within five (5) years after the sale or other act upon which it is based; and

(3) Every bond shall provide for suit on the bond by any person who has a cause of action under this chapter.

History. Acts 1959, No. 254, § 4; 1961, No. 248, § 2; 1973, No. 47, § 4; 1977, No. 493, § 2; 1979, No. 6, §§ 2, 3; 1983, No. 836, § 7; A.S.A. 1947, §§ 67-1238, 67-1238.1; Acts 1991, No. 298, § 1; 1995, No. 845, §§ 15, 16; 1997, No. 173, § 15; 2009, No. 534, § 7.

Publisher's Notes. Acts 1979, No. 6, § 1, provided it was the intent of the act to exempt those broker-dealers who operate

as sole proprietorships which have no agents other than the sole proprietor from the fidelity bond requirements of this section.

Amendments. The 2009 amendment, in (a), rewrote and subdivided the introductory language and redesignated the remaining subdivisions accordingly; deleted (b)(4); and made related and minor stylistic changes.

RESEARCH REFERENCES

Ark. L. Notes. Copeland, A Brief Survey of Some Important 1990 Insurance Law Decisions, 1991 Ark. L. Notes 75.

Ark. L. Rev. Note, Fidelity Bonds for

Broker-Dealers and the Scope of Liability in Arkansas: *Foster v. National Union Fire Insurance Co.*, 44 Ark. L. Rev. 865.

CASE NOTES

ANALYSIS

Indemnitor.
Limitations of Actions.
Standing.

Indemnitor.

Subdivision (a)(4) of this section does not give an investor a right of direct action against an indemnitor without regard to the principal's liability; an indemnitor is entitled to the rights and defenses avail-

able to the principal. *American Ins. Co. v. Cazort*, 316 Ark. 314, 871 S.W.2d 575 (1994).

Limitations of Actions.

Any action on the bond or securities posted in lieu thereof must be brought within statutory period from the date of the sale or act upon which the suit is based. *Wells v. Hill*, 239 Ark. 979, 396 S.W.2d 946 (1965).

Fraudulent concealment of a misrep-

sensation of the value of the stock sold or traded did not toll the limitations period of this section. *Martin v. Pacific Ins. Co.*, 245 Ark. 122, 431 S.W.2d 239 (1968).

Standing.

Subsection (b) of this section provides for suit by any person with a cause of

action under the Arkansas Securities Act in order to effectuate the protection of the investing public. *Foster v. National Union Fire Ins. Co.*, 902 F.2d 1316 (8th Cir. 1990).

23-42-306. Records and reports — Examinations.

(a) Every applicant, registered issuer, registered broker-dealer, or registered investment adviser shall make and keep any accounts, correspondence, memoranda, papers, books, and other records which the Securities Commissioner by rule prescribes. However, this subsection shall not apply to any registered investment adviser that maintains its principal place of business in a state other than Arkansas that:

(1) Is registered or licensed as such in the state in which it maintains its principal place of business; and

(2) Is in compliance with the applicable books and record-keeping requirements of the state in which it maintains its principal place of business.

(b) Every registered broker-dealer, issuer, or investment adviser shall file any financial reports which the commissioner by rule prescribes.

(c) If the information contained in any document filed with the commissioner or the commissioner's designee is or becomes inaccurate or incomplete in any material respect, then the registrant shall promptly file a correcting amendment.

(d)(1) All the records referred to in subsection (a) of this section are subject, at any time or from time to time, to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(2)(A) The applicant, issuer, broker-dealer, or investment adviser shall pay a fee for each examination, not to exceed one hundred fifty dollars (\$150) per examiner for each day or for each part of a day, during which examiners are absent from the office of the commissioner for the purpose of conducting the examination.

(B) In addition to the fee, the commissioner may require the applicant, issuer, broker-dealer, or investment adviser to pay the actual hotel and traveling expenses of each authorized examiner traveling to and from the office of the commissioner while the examiner is conducting the examination.

(3) For the purpose of avoiding unnecessary duplication of examination, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other

jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information he or she or his or her representatives may obtain as a result of any investigation or examination. "Examination" shall include the right to reproduce copies of the records referred to in subsection (a) of this section.

History. Acts 1959, No. 254, § 5; 1961, No. 248, § 3; 1963, No. 479, § 1; 1973, No. 47, §§ 5-7; 1975, No. 844, § 4; 1983, No. 836, § 9; 1985, No. 939, § 3; A.S.A. 1947, § 67-1239; Acts 1995, No. 845, § 17; 1997, No. 173, § 16; 1999, No. 363, § 2; 2009, No. 534, § 8; 2011, No. 339, § 5.

Amendments. The 2009 amendment subdivided (d)(2), substituted "one hundred fifty dollars (\$150)" for "one hundred dollars (\$100)" in (d)(2)(A), substituted

"the office of the commissioner while the examiner is conducting the examination" for "Little Rock Arkansas" in (d)(2)(B), and made related and minor stylistic changes.

The 2011 amendment, in (d)(2)(B), inserted "the commissioner may require" and substituted "to pay" for "shall pay."

U.S. Code. The Securities Exchange Act of 1934, referred to in this section, is codified as 15 U.S.C. § 78a et seq.

CASE NOTES

Information Required.

Requirement of bank commissioner of a statement of receipts and expenditures of company and a list of officers with their

holdings of stocks and bonds of the company was not unreasonable. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

23-42-307. Unlawful acts by investment advisers.

(a) It is unlawful for any investment adviser or representative:

(1) To employ any device, scheme, or artifice to defraud the other person;

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(3) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(1) Except as may be permitted by rule or order of the Securities Commissioner, the investment adviser shall not be compensated on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of the client. This subdivision (b)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date;

(2)(A) No assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.

(B) "Assignment", as used in this subdivision (b)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor, or of a controlling block of the assignor's outstanding voting securities, by a security holder of the assignor.

(C) However, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business; and

(3) The investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) The commissioner by rule prohibits custody; or

(2) In the absence of rule, the investment adviser fails to notify the commissioner that he or she has or may have custody.

History. Acts 1959, No. 254, § 2; A.S.A. 1947, § 67-1236; Acts 1993, No. 566, § 1; 1995, No. 845, § 18; 2009, No. 462, § 10.

Amendments. The 2009 amendment substituted “investment adviser or representative” for “person who receives, di-

rectly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise” in (a).

23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

(1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or of any felony, or has pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent, investment adviser, or representative;

(F)(i) Is the subject of an order entered within the past five (5) years by:

(a) The securities administrator of any other state;

(b) Any national securities, commodities, or banking agency or jurisdiction;

(c) Any national securities or commodities exchange;

(d) Any securities or commodities self-regulatory organization;

(e) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms; or

(f) Is the subject of a United States postal fraud order.

(ii) However, the commissioner may not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; and

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

(iv) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; and

(v) The commissioner shall consider that an investment adviser or representative is not necessarily qualified solely on the basis of experience as a broker-dealer or agent;

(J) Has failed reasonably to supervise the agents or employees of the broker-dealer or the representatives or employees of the investment adviser; or

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

(b) The commissioner may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order known to him or her when registration became effective, unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives the time limitation. For the purpose of this provision, a final judicial or administrative order shall not include an order that is stayed or subject to further review or appeal. This provision shall not apply to renewal registration.

(c)(1) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer, if the applicant or registrant is an agent or representative, that the order has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence, or has ceased to do business as a broker-dealer, agent, investment adviser, or representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, then the commissioner may by order cancel the registration or application.

(e)(1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the

withdrawal is instituted within thirty (30) days after the application is filed.

(2) If a proceeding is pending or instituted, then withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines.

(3) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subdivision (a)(2)(B) of this section within one (1) year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section, except under subdivision (c)(1) of this section, without:

(1) Appropriate prior notice to the applicant or registrant and to the employer or prospective employer if the applicant or registrant is an agent or representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative not to exceed:

(1) Ten thousand dollars (\$10,000) or an amount equal to the total amount of money received in connection with each separate violation; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars (\$20,000) for each violation; or

(B) Two (2) times the amount of money received in connection with each violation.

(h) Nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

History. Acts 1959, No. 254, § 6; 1961, No. 248, § 4; 1983, No. 836, §§ 10-12; A.S.A. 1947, § 67-1240; Acts 1995, No. 845, § 19; 2009, No. 534, §§ 9, 10; 2011, No. 339, §§ 6, 7.

Amendments. The 2009 amendment, in (a), inserted “make conditional or probationary” and “or she,” and made a related change; and rewrote (g), which read: “In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as pro-

vided in subsection (f) of this section, the commissioner may fine any broker-dealer, agent, investment adviser, or representative up to a maximum of five thousand dollars (\$5,000) for each separate violation of this chapter.”

The 2011 amendment substituted “revoking, or making conditional or probationary a registration” for “or revoking registration” in (a)(2)(E); and inserted “or employees” twice in (a)(2)(J).

CASE NOTES

Applicability.

Since § 23-42-302(e) and subdivision (a)(2)(I) and former subdivision (b)(6) of this section apply to applicants and registrants as defined in the Securities Act and are inapplicable to persons who only train applicants to take the broker-dealer examination, Securities Commissioner did not have a statutory basis to seek an

injunction to prevent defendants from performing certain acts in regard to carrying on their business of tutoring applicants for license as broker-dealers under the rules of the Municipal Securities Rule-making Board. *Bell v. Investment Training Inst., Inc.*, 271 Ark. 663, 609 S.W.2d 919 (1981).

SUBCHAPTER 4 — REGISTRATION OF SECURITIES

SECTION.

- 23-42-401. Registration by notification.
- 23-42-402. Registration by coordination.
- 23-42-403. Registration by qualification.
- 23-42-404. Registration statements generally.

SECTION.

- 23-42-405. Stop order denying, suspending, or revoking registration statement.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1971, No. 131, § 9: Feb. 22, 1971.

Emergency clause provided: "It is hereby found and determined by the General Assembly that the field of securities has become exceedingly complex and is in need of stricter regulation to assure that the purchasers of securities receive the protection that they deserve; that it is necessary for the Securities Commissioner to have the authority to immediately issue a stop order denying, suspending or revoking the effectiveness of a registration statement under certain conditions; that the penalty for violation of the Securities Act should be increased to discourage further violations and to curtail the total number of violations; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the filing fee for filing a

registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act; that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be achieved; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become a part of the Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Commissioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkan-

sas. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 449, § 4: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the increased demand on the State Securities office has resulted in an immediate need for additional revenues to provide the services demanded from that office; that this act provides some of those needed revenues by means of increasing certain fees; and that this Act should go into effect immediately in order to generate additional revenues as soon as possible. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 659 and 850, § 9: Mar. 24, 1993. Emergency clauses provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Securities Department. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., § 25 et seq.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 201 et seq.

23-42-401. Registration by notification.

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under § 23-42-402:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(A) There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or any predeces-

sor, with a fixed maturity or a fixed interest or dividend provision; and

(B) The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which:

(i) Are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and are equal to at least three percent (3%) of the amount of the outstanding securities as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty (30) days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within ninety (90) days of the date of filing the registration statement, to the extent that there is neither a readily determinable market price nor a cash offering price; or

(ii) If the issuer and any predecessors have not had any security of the type specified in subdivision (a)(1)(B)(i) of this section outstanding for three (3) full fiscal years equal to at least five percent (5%) of the amount as measured in subdivision (a)(1)(B)(i) of this section of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued; and

(2) Any security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if:

(A) Any security of the same class has ever been registered under this chapter or a predecessor act; or

(B) The security being registered was originally issued pursuant to an exemption under this chapter or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 23-42-404(c) and the consent to service of process required by § 23-42-107(a):

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary:

(A) Its name, address, and form of organization;

(B) The state or foreign jurisdiction and the date of its organization; and

(C) The general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(A) His or her name and address;

(B) The amount of securities of the issuer held by him or her as of the date of the filing of the registration statement;

(4) A description of the security being registered;

(5) The information and documents specified in § 23-42-403(b)(8), (b)(10), and (b)(12); and

(6) In the case of any registration under subdivision (a)(2) of this section which does not also satisfy the conditions of subdivision (a)(1) of this section, a balance sheet of the issuer for the calendar year immediately prior to the filing of the registration statement and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(c) If no stop order is in effect and no proceeding is pending under § 23-42-405, a registration statement under this section automatically becomes effective at three o'clock (3:00) Central Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Securities Commissioner determines.

History. Acts 1959, No. 254, § 8; A.S.A. 1947, § 67-1242; Acts 1995, No. 845, § 20; 2011, No. 339, § 8.

Amendments. The 2011 amendment substituted "§ 23-42-404(c)" for "§ 23-42-404(d)" in (b).

23-42-402. Registration by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 23-42-404(c) and the consent to service of process required by § 23-42-107(a):

(1) One (1) copy of the prospectus together with all amendments filed under the Securities Act of 1933;

(2) If the Securities Commissioner, by rule or otherwise, requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c)(1) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(A) No stop order is in effect and no proceeding is pending under § 23-42-405;

(B) The registration statement has been on file with the commissioner for at least twenty (20) days; and

(C) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the commissioner permits by rule or otherwise, and the offering is made within those limitations.

(2)(A)(i) The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment.

(ii) "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(B) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with this subsection, if the commissioner promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when the commissioner notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry.

(3) The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (c)(1)(B) and (C) of this section.

(4) If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone, telegram, or by electronic means at the registrant's expense whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under § 23-42-405, but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History. Acts 1959, No. 254, § 9; A.S.A. 1947, § 67-1243; Acts 1995, No. 845, § 21; 2005, No. 420, § 1; 2009, No. 462, § 11; 2011, No. 339, § 9.

Amendments. The 2009 amendment substituted "(c)(1)(B) and (C)" for "(c)(1)(A) and (c)(1)(B)" in (c)(3).

The 2011 amendment substituted "§ 23-42-404(c)" for "§ 23-42-404(d)" in (b).

U.S. Code. The Securities Act of 1933, referred to in this section, is codified as 15 U.S.C. § 77a et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Insurance Law, 28 U. Ark. Little Rock L. Rev. 393.

23-42-403. Registration by qualification.

- (a) Any security may be registered by qualification.
- (b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 23-42-404(c), and the consent to service of process required by § 23-42-107:
 - (1) With respect to the issuer and any significant subsidiary:
 - (A) Its name, address, and form of organization;
 - (B) The state or foreign jurisdiction and date of its organization;
 - (C) The general character and location of its business;
 - (D) A description of its physical properties and equipment; and
 - (E) A statement of the general competitive conditions in the industry or business in which it is or will be engaged;
 - (2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions:
 - (A) His or her name, address, and principal occupation for the past five (5) years;
 - (B) The amount of securities of the issuer held by him or her as of a specified date within thirty (30) days of the filing of the registration statement;
 - (C) The amount of the securities covered by the registration statement to which he or she has indicated his or her intention to subscribe; and
 - (D) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;
 - (3) With respect to persons covered by subdivision (b)(2) of this section, the remuneration paid during the past twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;
 - (4) With respect to any person owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b)(2) of this section, other than his or her occupation;
 - (5) With respect to every promoter if the issuer was organized within the past three (3) years:
 - (A) The information specified in subdivision (b)(2) of this section;
 - (B) Any amount paid to him or her within that period or intended to be paid to him or her; and
 - (C) The consideration for the payment;
 - (6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution:

(A) His or her name and address;

(B) The amount of securities of the issuer held by him or her as of the date of the filing of the registration statement;

(C) A description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three (3) years or proposed to be effected;

(7) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;

(8)(A) The kind and amount of securities to be offered;

(B) The proposed offering price or the method by which it is to be computed;

(C) Any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of the person or class;

(D) The basis upon which the offering is to be made if otherwise than for cash;

(E) The estimated aggregate underwriting and selling discounts or commissions and finders' fees, including, separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts;

(F) The estimated amounts of other selling expenses, including legal, engineering, and accounting charges;

(G) The name and address of every underwriter and every recipient of a finder's fee;

(H) A copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and

(I) A description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9)(A) The estimated cash proceeds to be received by the issuer from the offering;

(B) The purposes for which the proceeds are to be used by the issuer;

(C) The amount to be used for each purpose;

(D) The order or priority in which the proceeds will be used for the purposes stated;

(E) The amounts of any funds to be raised from other sources to achieve the purposes stated;

(F) The sources of any such funds; and

(G) If any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business,

the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, the amounts of those commissions, and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of those options held or to be held by every person required to be named in subdivision (b)(2), subdivision (b)(4), subdivision (b)(5), subdivision (b)(6), or subdivision (b)(8) of this section and by any person who holds or will hold ten percent (10%) or more in the aggregate of those options;

(11) The dates of, parties to, and general effect, concisely stated, of every management or other material contract made or to be made otherwise than in the ordinary course of business, if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract and with a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement, television, radio, or other sales literature intended as of the effective date to be used in connection with the offering;

(13)(A) A specimen or copy of the security being registered;

(B) A copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and

(C) A copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security, when sold, will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(16)(A) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement;

(B) A profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three (3) years; and

(C) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(17) Such additional information as the Securities Commissioner requires by rule or order.

(c) A registration statement under this section becomes effective when the commissioner so orders.

(d) The commissioner may by rule or order require, as a condition of registration under this section, that a prospectus containing any designated part of the information specified in subsection (b) of this section be sent or given to each person to whom an offer is made concurrently with:

(1) The first written offer made to him or her, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs.

History. Acts 1959, No. 254, § 10; A.S.A. 1947, § 67-1244; Acts 1995, No. 845, § 22; 2011, No. 339, § 10.

Amendments. The 2011 amendment substituted “§ 23-42-404(c)” for “§ 23-42-404(d)” in (b).

23-42-404. Registration statements generally.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b)(1) Every person filing a registration statement shall pay a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than one hundred fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any portion of the fee in excess of one thousand dollars (\$1,000) shall be designated as special revenues and shall be deposited into the Securities Department Fund. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under § 23-42-405, the Securities Commissioner shall retain one hundred fifty dollars (\$150) of the filing fee.

(2) Sales of securities in excess of the amount of securities to have been offered in this state shall require the person filing the registration statement to pay a filing fee, calculated in the manner specified in subdivision (b)(1) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person filing the registration statement shall pay a penalty fee of two hundred dollars (\$200).

(c) Every registration statement shall specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this chapter or a predecessor act, within five (5) years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under § 23-42-403 or subsection (m) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g)(1) The commissioner may, by rule or order, require as a condition of registration by qualification or coordination that:

(A) Any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow;

(B) The proceeds from the sale of the registered security be impounded until the issuer receives a specified amount.

(2) The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but he or she may not reject a depository solely because of location in another state.

(h) The commissioner may require the issuer, as a condition of registration by qualification, to escrow up to ten percent (10%) of the maximum aggregate price of the offering, from the offering proceeds under such terms and conditions as he or she deems appropriate for up to three (3) years from the date of termination of the offering, or to post a corporate surety bond for up to ten percent (10%) of the maximum aggregate price of the offering for up to (3) years from the date of termination of the offering. Any security holder having a right under this chapter against the issuer shall have a right of action against the escrow or corporate surety bond.

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on an approved form of subscription or sale contract and that a signed or conformed copy of each subscription or sale contract be filed with the commissioner or preserved for any period up to three (3) years specified in the rule or order.

(j) Every registration statement is effective for one (1) year from its effective date and, upon renewal, for any longer period during which the security is being offered or distributed in a nonexempted transaction, except during the time a stop order is in effect.

(k) Renewal registration for the succeeding twelve-month period may be issued upon written application and upon payment of fees as provided by this section for original registration, even though the maximum fee was paid the preceding period, without filing of further statements or furnishing any further information except as requested by the commissioner. All applications for renewal received after the expiration of the previous registration shall be treated as original applications.

(l)(1) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transactions:

(A) So long as the registration statement is effective, whether by original or renewal registration; and

(B) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under § 23-42-405, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one (1) year from the effective date of the registration statement.

(2) A registration statement may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(m) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(n) A registration statement relating to a security may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(o) The State Securities Department is hereby authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and § 23-42-304 and is directed to prescribe and collect the fees, rates, tolls, or charges for the services by the department in the manner that may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

(p) The commissioner may consider a registration statement abandoned and withdrawn by the applicant if the:

(1) Registration statement has not been completed within one hundred eighty (180) days after filing with the commissioner; and

(2) Applicant has been notified of the deficiencies in the application and provided a reasonable opportunity to correct the deficiencies.

History. Acts 1959, No. 254, § 11; 1961, No. 248, § 5; 1971, No. 131, § 1; 1973, No. 47, § 9; 1977, No. 493, § 3; 1979, No. 754, § 1; 1983, No. 836, §§ 22-24; A.S.A. 1947, § 67-1245; Acts 1987, No. 449, § 2; 1993, No. 659, §§ 3, 5; 1993, No. 850, § 3, 5; 1995, No. 845, § 23; 1997, No. 173, § 17; 2011, No. 339, § 11.

Amendments. The 2011 amendment added (p).

U.S. Code. The Investment Company Act of 1940, referred to in this section, is codified throughout Title 11 and 15 U.S.C. §§ 80a-1 to 80a-52.

23-42-405. Stop order denying, suspending, or revoking registration statement.

(a) The Securities Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he or she finds that:

(1) The order is in the public interest; and

(2)(A) The registration statement is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact as of the effective date of:

(i) The registration statement or an earlier date from an order denying the effective date of the registration statement;

(ii) An amendment under § 23-42-404(n); or

(iii) A report under § 23-42-404(m);

(B) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering, by:

(i) The person filing the registration statement;

(ii) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) Any underwriter;

(C) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of a court of competent jurisdiction entered under any other federal or state act applicable to the offering, but:

(i) The commissioner shall not institute a proceeding against an effective registration statement under this subdivision (a)(2)(C) more than one (1) year from the date of the order or injunction relied on; and

(ii) The commissioner shall not enter an order under this subdivision (a)(2)(C) on the basis of an order or injunction entered under another state act unless that order or injunction was based on facts that would currently constitute grounds for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) The offering has worked or tended to work a fraud upon purchasers or would so operate, or any aspect of the offering is substantially unfair, unjust, inequitable, or oppressive;

(F) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, unreasonable amounts of promoters' profits or participation, or unreasonable amounts or kinds of options;

(G) When a security is sought to be registered by notification, it is not eligible for such a registration;

(H) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 23-42-402(b)(4); or

(I) The applicant or registrant has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision (a)(2)(I), and he or she shall vacate any such order when the deficiency has been corrected.

(b) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.

(c)(1) The commissioner may, by order, summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (d) of this section that it has been entered and the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to each person specified in subsection (d) of this section, may modify or vacate the order or extend it until final determination.

(4) In the case of a registration by coordination pursuant to § 23-42-402, the commissioner may accept a waiver of concurrent effectiveness submitted by the issuer, without the necessity of the entry of an order to summarily postpone effectiveness.

(d) No stop order may be entered under any part of this section except subdivision (c)(1) of this section without:

(1) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(e) The commissioner may vacate or modify a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

History. Acts 1959, No. 254, § 12; 1971, No. 131, §§ 2, 3; 1985, No. 939, § 4; A.S.A. 1947, § 67-1246; Acts 1995, No. 845, § 24; 2011, No. 339, §§ 12, 13.

Amendments. The 2011 amendment

rewrote the introductory paragraph of (a)(2)(A) and inserted (a)(2)(A)(i) through (iii); and substituted “(a)(2)(C)” for “(a)(1)(C)” in (a)(2)(C)(i).

SUBCHAPTER 5 — REGULATION OF TRANSACTIONS

SECTION.

- 23-42-501. Sale of unregistered nonexempt securities.
- 23-42-502. Filing of prospectus, sales literature, etc.
- 23-42-503. Exempted securities.
- 23-42-504. Exempted transactions.
- 23-42-505. Denial or revocation of exemption.

SECTION.

- 23-42-506. Burden of proof of exemption.
- 23-42-507. Fraud or deceit in connection with offer, sale, or purchase of securities.
- 23-42-508. Market manipulation.
- 23-42-509. Covered securities.

Effective Dates. Acts 1959, No. 254, § 30: July 1, 1959.

Acts 1961, No. 248, § 11: July 1, 1961.

Acts 1971, No. 131, § 9: Feb. 22, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that the field of securities has become exceedingly complex and is in need of stricter regulation to assure that the purchasers of securities receive the protection that they deserve; that it is necessary for the Securities Commissioner to have the authority to immediately issue a stop order denying, suspending or revoking the effectiveness of a registration statement under certain conditions; that the penalty for violation of the Securities Act should be increased to discourage further violations and to curtail the total number of violations; and that only by the immediate passage of this Act can this be achieved. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

Acts 1973, No. 47, § 20: Feb. 1, 1973. Emergency clause provided: “It is hereby found and determined by the General Assembly that the field of securities is in need of stricter regulation to assure the public that they receive the protection they deserve; that the fee for filing a registration statement is inadequate; that there is a need for immediate clarification of certain portions of the Securities Act;

that the penalty for violation of the Securities Act should be increased to discourage further violations and to deter the total number of violations and that only by the immediate passage of this Act can this be achieved; therefore an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval.”

Acts 1975, No. 697, § 4: Apr. 3, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that existing laws determining the interrelationship between the Arkansas Securities Act and the Arkansas Savings and Loan Act are unclear; and that the Arkansas Securities Commissioner acting as Securities Commissioner and also as Arkansas Savings and Loan Supervisor must have a clarification of his authority in each area; and that therefore an emergency exists and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1975, No. 844, § 16: Apr. 4, 1975. Emergency clause provided: “It has been found and is hereby declared by the General Assembly that the filing fees are inadequate; that exemptions are necessary for certain types of securities; that there is a need for immediate clarification of certain portions of the Securities Act; therefore, an emergency is hereby declared to

exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 493, § 21: Mar. 18, 1977. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that securities transactions always involve a relationship of trust and usually involve fiduciary obligations. This relationship facilitates the cover-up of felonies committed under the securities laws. This act being necessary for the protection of the health, safety and welfare of the citizens of this State, it is effective from and after its passage and approval, and it applies to all schemes or courses of conduct continuing past its effective date; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1983, No. 836, § 29: Mar. 25, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that the ability of the State of Arkansas to become part of a national Central Registration Depository System will be beneficial to the citizens of the State and applicants for registration and provide substantial cost savings to the securities industry and that Arkansas' entry into the system is scheduled to be soon. This Act being necessary for the additional protection and savings for the citizens of this State which will be afforded by entry into the System, it is effective from and after its passage and approval; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation

of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1985, No. 939, § 12: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the occurrence of new types of securities being made available to investors in combination with the proliferation of unregulated security advisors offering their services to the investing public indicate an immediate need for additional regulatory scrutiny of the securities and the practice of offering security advice; that this Act grants the Securities Commissioner the necessary flexibility to deal with these situations and should be given immediate effect in order to adequately protect the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 776, § 5: Apr. 7, 1987. Emergency clause provided: "It has been found and it is declared by the General Assembly that an urgent need exists to define the term "farm cooperative" in order to clarify which organizations are eligible for an exemption from registration under the Arkansas Securities Act (Act No. 254 of the Acts of Arkansas of 1959), as amended, of certain securities issued by farm cooperatives, and that immediate passage of this Act is necessary to provide such clarification. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1993, No. 1147, § 1705. Jan. 1, 1994.

RESEARCH REFERENCES

Am. Jur. 69 Am. Jur. 2d, Secur. Reg. St., §§ 11-14 and § 69 et seq.

Ark. L. Rev. Proxy and Insider-Trading Regulation: Federal-State Cooperation in the Protection of Investors, 19 Ark. L. Rev. 308.

Securities Regulation — Texas Gulf Sulphur — A Few Aspects, 23 Ark. L. Rev. 145.

C.J.S. 79 C.J.S. Supp., Secur. Reg., § 208 et seq.

U. Ark. Little Rock L.J. Survey of Arkansas Law: Business Organizations, 6 U. Ark. Little Rock L.J. 83.

Legislation of the 1983 General Assembly, Business Law, 6 U. Ark. Little Rock L.J. 607.

23-42-501. Sale of unregistered nonexempt securities.

It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this chapter;
- (2) The security or transaction is exempted under § 23-42-503 or § 23-42-504; or
- (3) It is a covered security.

History. Acts 1959, No. 254, § 7; A.S.A. 1947, § 67-1241; Acts 1997, No. 173, § 18.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Securities, 11 U. Ark. Little Rock L.J. 255.

CASE NOTES

ANALYSIS

Purpose.
Burden of Proof.
Duty to Register.
Evidence.
Exemptions.
Statute of Limitations.

Purpose.

It was not the intent of the Arkansas Securities Act to allow the law to be used by sophisticated brokers and dealers for promotional projects thereby reaping consultant benefits, sales commissions, and other benefits, without fully complying with the requirements of the law. *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979).

Burden of Proof.

Upon the showing of a sale of a security, the burden shifts to the seller to show that the security was either registered or exempt from the Arkansas Securities Act, or that the buyer is estopped from claiming civil damages. *McMullan v. Molnaird*, 24 Ark. App. 126, 749 S.W.2d 352 (1988).

Duty to Register.

Since the law of this state imposes an absolute duty on directors to register securities prior to sale, blame for not registering securities cannot be shifted to the securities department investigators and enforcers. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Ignorance of a duty to register securities, or to procure their exemption, can in

no way excuse the failure to do so; the only conceivable excuse under the “lack of knowledge” defense would be if the director affirmatively believed that the securities were registered, and even then, § 23-42-106 demands that such mistaken knowledge be not the product of negligence, and the director bears the burden of proving that he was not so negligent. *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

Ignorance of the securities law in no way excuses failure to register securities, or to procure their exemption. *Hogg v. Jerry*, 299 Ark. 283, 773 S.W.2d 84 (1989).

Evidence.

It makes little difference whether defendants be classified as dealers, promoters or representatives; the evidence established that they were engaged in selling stock without first registering same, or obtaining a certificate of approval, and neither the stock nor the transactions were exempt and thus under the undisputed facts, defendants, as a matter of law, clearly violated the securities act. *Arkansas Real Estate Co. v. Fullerton*, 232 Ark. 713, 339 S.W.2d 947 (1960) (decision under prior law).

Conviction of one charged with violation of this section who defended on the ground that he had obtained an exemption for the security sold under § 23-42-504(a)(9) was not sustained by evidence that the defendant sold the security to persons who were not on the list of offerees filed with the

Securities Commissioner in compliance with a rule of the commissioner. *Gaskin v. State*, 244 Ark. 541, 426 S.W.2d 407 (1968).

Investor's motion for summary judgment on the issue of defendants' liability for failure to register under the Arkansas Security Act, § 23-42-101 et seq. was denied because there were issues remaining concerning whether or not defendants were exempt from the state registration as a "covered security" under federal law; the fact that defendants did not file a Federal Form D did not, by itself, preclude defendants from asserting that the securities they sold were exempt. *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

Exemptions.

An agricultural and mechanical fair association was held exclusively "educational" so that no permit was required for the sale of its stock. *Saxon v. Arkansas State Fair Ass'n*, 181 Ark. 750, 27 S.W.2d 505 (1930) (decision under prior law).

Where sellers of joint venture interests in an apartment complex received over \$20,000 for "consulting fees," and where the sellers organized, constructed, man-

aged and controlled the properties of the joint venture, the joint venture interests were not exempt from registration. *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977).

Statute of Limitations.

In the absence of any indication that the legislature intended to make the extension of the statute of limitations by the 1973 amendment to § 23-42-106 retroactive, that statute of limitations was applicable only to causes of action arising after the 1973 act became effective; therefore a civil action for an illegal sale of securities was barred where the sale was made prior to the enactment of the 1973 amendment, but suit was not commenced until after the expiration of the statute of limitations prior to the 1973 amendment. *Morton v. Tullgren*, 263 Ark. 69, 563 S.W.2d 422 (1978).

Cited: *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979); *Bank of Waldron v. Scott County Bank*, 267 Ark. 407, 590 S.W.2d 654 (1979); *Tanenbaum v. Agri-Capital, Inc.*, 885 F.2d 464 (8th Cir. 1989); *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997); *Rooney v. Williamson*, 167 F.3d 1185 (8th Cir. 1999).

23-42-502. Filing of prospectus, sales literature, etc.

The Securities Commissioner, by rule or order, may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, television, radio, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as part of an exempt offering required to be filed under § 23-42-503(d) or § 23-42-504(b).

History. Acts 1959, No. 254, § 15; 1979, No. 754, § 3; A.S.A. 1947, § 67-1249; Acts 1997, No. 173, § 19.

CASE NOTES

Cited: *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997).

23-42-503. Exempted securities.

(a) The following securities are exempted from §§ 23-42-501 and 23-42-502:

(1)(A) Any security, including a revenue obligation, issued or guaranteed by this state, any political subdivision of this state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any certificate of deposit for any of the foregoing.

(B) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are "mortgage related securities" as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 are not covered securities in the same manner as obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. These instruments, commonly referred to as private mortgage-backed securities, may be exempt from the registration requirements of this chapter, provided that the transaction or the securities are otherwise exempt under this section. This provision specifically overrides the preemption of state law contained in section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, of the United States;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of any bank organized under the laws of the United States, or any federally insured savings bank, or any bank, savings institution, or trust company organized and supervised under the laws of any state, or any bank holding company regulated under the Bank Holding Company Act of 1956;

(4) Any security issued by and representing an interest in or a debt of any state or federal savings and loan association, or any federally insured savings bank, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state, or any savings and loan holding company regulated by the Office of Thrift Supervision [abolished] or its successor;

(5) Any security issued or guaranteed by any public utility or holding company which is:

(A) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(B) Regulated in respect of its rates and charges by a governmental authority of the United States or any state; or

(C) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(6) Any security of a world-class foreign issuer that meets the qualifications as set forth by rule of the Securities Commissioner;

(7) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent,

charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, of the United States shall not preempt any provision of this chapter;

(8) Any investment contract or other security issued in connection with an employees' stock purchase, savings, pension, profit sharing, stock bonus, stock option, or similar benefit plan. Plans which do not meet the requirements for qualification under the Internal Revenue Code must file with the commissioner prior to any offer or sale a notice specifying the terms of the plan. The commissioner may by order disallow the exemption within ten (10) days; and

(9) Any security as to which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(b) The commissioner may, from time to time, by his or her rules, and subject to any terms, conditions, and fees which may be prescribed therein, add any class of securities to the securities exempted as provided in this section if the commissioner finds that the enforcement of this chapter with respect to the securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering, but no issue of securities shall be exempted under this section when the aggregate amount at which the issue is offered to the public exceeds one million dollars (\$1,000,000).

(c) The following shall apply to farm cooperatives organized under the laws of this state as a business corporation but operated as a cooperative, or organized and operated in this state under § 2-2-101 et seq., §§ 2-2-401 — 2-2-411, 2-2-413 — 2-2-429, 4-30-101 — 4-30-117, 4-30-201, 4-30-202, and 4-30-204 — 4-30-207, and to any nonprofit farm cooperative which is qualified to do business in this state:

(1) Any common stock, preferred stock, promissory note, debenture, or other security may be issued to any cooperative member after either compliance with subsection (d) of this section or delivery to the cooperative member and filing, with the commissioner, of financial statements of the farm cooperative for each of the two (2) fiscal years as of a date not earlier than four hundred fifty-five (455) days prior to the issuance of the security, all of which statements shall have been audited, examined, and certified by independent public accountants to have been prepared in accordance with generally accepted accounting principles consistently maintained by the cooperative during the fiscal years represented by the statements. No registered agent shall be required if no commission or other remuneration is to be paid in connection with the offer and sale of such securities; or

(2) Any interest or agreement which qualifies its holder to be a member or other patron of a farm cooperative or which represents the terms or conditions by which members or other patrons purchase or sell agricultural products or commodities from, to, or through a farm cooperative, or which represents a capital retain, or patronage distri-

bution issued by a farm cooperative solely to its members or other patrons shall not be considered to be a security under this chapter and shall not be subject to the provisions of this chapter, provided:

(A) The instruments or interests are properly identified and not labeled with the traditional names of investment securities as defined by § 23-42-102(17);

(B) The instruments or interests are not part of a class of instruments or interests regularly bought or sold for investment purposes or for which an active trading market exists. However, this limitation shall not in any way restrict the bona fide pledge of the instruments or interests; and

(C) No commission or other remuneration is paid in connection with the sale or issuance to members or other patrons of the interests and instruments. This exemption shall not apply to those interests or instruments which possess the characteristics of an investment contract or other security as interpreted under the laws of the State of Arkansas; and

(3) The commissioner may render foreign nonprofit farm cooperatives the privilege afforded Arkansas nonprofit farm cooperatives set forth in subdivision (c)(2) of this section, provided the foreign cooperative first files supporting documents verifying that it is qualified to do business in Arkansas, that members have substantially the same rights as members of farm cooperatives organized under the nonprofit farm cooperative corporate laws of this state, that the offering is within the scope of subdivision (c)(2) of this section, and any other information which the commissioner deems appropriate.

(d)(1) Before any security may be issued as an exempted security under subdivision (a)(7) of this section, a proof of exemption must first be filed with the commissioner, and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct the deficiencies.

(4) Each offering shall be effective only for twelve (12) consecutive months.

(5) For every proof of exemption filed with the commissioner, there shall be paid to the commissioner a filing fee equal to one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state. The fee shall in no case be less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The commissioner shall have authority under this subsection to amend or

rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1973, No. 47, §§ 12, 14; 1975, No. 697, § 1; 1975, No. 844, §§ 7, 8, 11; 1977, No. 493, §§ 6, 7, 10; 1979, No. 754, §§ 2, 8; 1983, No. 836, §§ 14, 15; 1985, No. 939, §§ 5-8; A.S.A. 1947, §§ 67-1247, 67-1248; Acts 1987, No. 776, § 2; 1989, No. 348, § 1; 1993, No. 1147, § 1807; 1995, No. 845, §§ 25, 26; 1997, No. 173, § 20; 2005, No. 420, § 2.

A.C.R.C. Notes. The Office of Thrift Supervision referred to in this section was abolished by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. The responsibilities of the former entity have been largely

assumed by the Office of the Comptroller of the Currency.

U.S. Code. The Bank Holding Company Act of 1956, referred to in this section, is codified as 12 U.S.C. § 1841 et seq.; the Philanthropy Protection Act of 1995 is codified as a note under 15 U.S.C. § 80a-51; the Internal Revenue Code of 1954 is codified as Title 26, U.S.C.; Section 4(5) of the Securities Act of 1933 and Section 3(a)(41) of the Securities Exchange Act of 1934 are codified as 15 U.S.C. §§ 77d(5) and 78c(a)(41), respectively; and Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984 is codified as 15 U.S.C. § 77r-1.

RESEARCH REFERENCES

Ark. L. Rev. Note, Promissory Demand Notes: Investor Protection or Peril, Arthur Young & Co. v. Reves, 42 Ark. L. Rev. 1075.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2005 Arkansas General Assembly, Insurance Law, 28 U. Ark. Little Rock L. Rev. 393.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Proof of Exemption.

Unlawful Sales.

Constitutionality.

Fact that reasonable exemptions were made did not make former act unconstitutional; and fact that former act which provided for the regulation and supervision of investment companies made exceptions in favor of notes secured by mortgages on real estate in Arkansas did not render the act void. *Standard Home Co. v. Davis*, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

Purpose.

This section was designed to protect both investors in common stock and those persons who, in substance, are the investors in the disguised business schemes of another. *Union Nat'l Bank v. Farmers Bank*, 786 F.2d 881 (8th Cir. 1986).

Proof of Exemption.

Contention of prosecution that exemption offered under this section is postponed unless and until the reasons set forth in the application as the basis for the exemption are true and are in good faith carried out was erroneous, since such interpretation would require, in effect, that the accused prove his innocence to avoid conviction, rather than the state being required to prove him guilty before obtaining a conviction. *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970).

The burden of proving an exemption or exception from an exemption is upon the person claiming it, and a proof of exemption must be filed with the commissioner to prove that the transaction was exempt. *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997).

Unlawful Sales.

In a prosecution for knowingly selling unregistered securities, a verdict of guilty on counts of knowingly causing unregistered stocks to be sold was supported by

evidence that sales were made before the application for exemption under this section, notwithstanding exemption was thereafter obtained. *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970).

Cited: *Shepherd v. State*, 246 Ark. 744, 439 S.W.2d 627 (1969); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974); *International Trading, Ltd. v. Bell*, 262 Ark. 244, 556 S.W.2d 420 (1977);

Wilkins v. M & H Fin., Inc., 476 F. Supp. 212 (E.D. Ark. 1979); *Graham v. Kane*, 264 Ark. 949, 576 S.W.2d 711 (1979); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark. 320, 691 S.W.2d 853 (1985); *F & M Bank v. Hamilton Hotel Partners Ltd. Partnership*, 702 F. Supp. 1417 (W.D. Ark. 1988); *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

23-42-504. Exempted transactions.

(a) The following transactions are exempted from §§ 23-42-501 and 23-42-502:

(1) Any isolated nonissuer transactions, whether effected through a broker-dealer or not. Provided, that repeated or successive transactions shall be prima facie evidence that the transactions are not isolated nonissuer transactions;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, provided at the time of the transaction:

(A) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(B) The security is sold at a price reasonably related to the current market price of the security;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(D) A nationally recognized securities manual designated by rule or order of the commissioner or a document filed with the Securities and Exchange Commission that is publicly available through the Securities and Exchange Commission's Electronic Data Gathering and Retrieval System and contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and

(iv) An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of

the issuer, if in existence for less than two (2) years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and

(E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2011, unless:

(i) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2011;

(ii) The issuer and predecessors of the issuer of the security have been engaged in continuous business for at least three (3) years; or

(iii) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on:

(a) An audited balance sheet dated within the past eighteen (18) months; or

(b) In the case of a reorganization or merger of parties with audited balance sheets dated within the past eighteen (18) months showing total assets of at least two million dollars (\$2,000,000), a pro forma balance sheet;

(3) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(4) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(5) Any transactions by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(7) Any transactions by a person exempted from registration under § 23-42-102(3)(B)(v), provided that the transaction would be lawful in the place of residence of the offeree or purchaser had it occurred there instead of in this state;

(8) Any offer or sale:

(A) By an issuer to a person in a state other than this state if that offer or sale would be lawful if made in the other state; or

(B) To a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. The Securities Commissioner may by order, upon petition by any person, determine if the petitioner may be deemed, upon the basis of knowledge, experience, volume, and number of transactions, and other securities background, an "institutional buyer" for purposes of this subdivision (a)(8);

(9)(A) Any transaction pursuant to an offer and sale to not more than thirty-five (35) purchasers other than those designated in subdivision (a)(8) of this section during any period of twelve (12) consecutive months, if:

(i) The seller reasonably believes that all the buyers are purchasing for investment; and

(ii) No commission or other remuneration shall be paid or given directly or indirectly for soliciting any prospective buyer in this state unless the person receiving any such commission or remuneration is registered pursuant to § 23-42-301.

(B) However, the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in subdivisions (a)(9)(A)(i) and (ii) of this section with or without the substitution of a limitation on remuneration;

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities or warrants, if no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state, unless the commissioner shall, upon written application, permit the payment of a commission or other remuneration with or without the substitution of a limitation on remuneration;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) Any other transaction which the commissioner by rule or order exempts as not being necessary or appropriate in the public interest for the protection of investors.

(b)(1) Before any transaction shall be executed as an exempted transaction under subdivision (a)(9) or subdivision (a)(10) of this section, except, in the case of dividend reinvestment and stock purchase programs pursuant to subdivision (a)(10) of this section, a proof of exemption must first be filed with the commissioner and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days. Before any dividend reinvestment and stock purchase program shall be executed as an exempt transaction under subdivision (a)(10) of this section, an initial proof of exemption shall be filed. Thereafter, in every fifth year a proof of exemption must be filed with the commissioner, and the commissioner by order must not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commis-

sioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct such deficiencies.

(4)(A) For every proof of exemption filed with the commissioner under subdivision (a)(9) of this section, there shall be paid to the commissioner a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500).

(B) For every proof of exemption filed with the commissioner under subdivision (a)(10) of this section, there shall be paid to the commissioner a filing fee of fifty dollars (\$50.00).

(C) The commissioner shall have authority under this subsection to amend or rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1963, No. 512, § 1; 1971, No. 131, § 4; 1973, No. 47, §§ 13, 15; 1975, No. 844, §§ 9, 10, 12; 1977, No. 493, § 8; 1983, No. 836, §§ 20, 25; 1985, No. 610, § 1; 1985, No. 939, § 8; A.S.A. 1947, § 67-1248; Acts 1995, No. 845, § 27; 1997, No. 173, § 21; 1999, No. 363, § 3; 2005, No. 420, § 3; 2009, No. 462, § 12; 2011, No. 339, § 14.

Amendments. The 2009 amendment, in (a)(2)(E), inserted “15 U.S.C. § 78a et seq., as it existed on January 1, 2009” and deleted “or designated for trading on the National Association of Securities Dealers Automated Quotation System” preceding “unless,” inserted “15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2009” in

(a)(2)(E)(i), subdivided (a)(2)(E)(iii), inserted “dated within the past eighteen (18) months showing total assets of at least two million dollars (\$2,000,000)” in (a)(2)(E)(iii)(b), and made related and minor stylistic changes.

The 2011 amendment substituted “January 1, 2011” for “January 1, 2009” in (a)(2)(E) and (a)(2)(E)(i).

U.S. Code. The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80a-1 et seq. The Securities Act of 1933 is codified as 15 U.S.C. § 77a et seq. Sections 12, 13, and 15(d) of the Securities Exchange Act of 1934 are codified as 15 U.S.C. §§ 78l, 78m, and 78o(d), respectively.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Business Law, 25 U. Ark. Little Rock L. Rev. 885.

Survey of Legislation, 2005 Arkansas General Assembly, Insurance Law, 28 U. Ark. Little Rock L. Rev. 393.

CASE NOTES

ANALYSIS

Constitutionality.
Institutional Buyer.
Isolated Nonissuer Transactions.
Joint Ventures.
Proof of Exemption.
Transactions Pursuant to Offers.
Unlawful Sales.

Constitutionality.

Fact that reasonable exemptions were made did not make former act unconstitutional; and fact that former act which provided for the regulation and supervision of investment companies made exceptions in favor of notes secured by mortgages on real estate in state of Arkansas did not render the act void. Standard

Home Co. v. Davis, 217 F. 904 (E.D. Ark. 1914) (decision under prior law).

Institutional Buyer.

Where individual himself, and not a bank, directed the investment of an IRA, and there was no indication that he was aided in any manner by a bank or its officials, that individual was not an "institutional buyer" within the meaning of subdivision (a)(8). *F & M Bank v. Hamilton Hotel Partners Ltd. Partnership*, 702 F. Supp. 1417 (W.D. Ark. 1988).

Isolated Nonissuer Transactions.

Certain stock transactions were "isolated nonissuer" as a result of the insider status of two of the purchases, and the small infrequent number of sales. *Rucker v. La-Co, Inc.*, 496 F.2d 850 (8th Cir. 1974).

The purpose of the exemption of subdivision (a)(1) of this section is to exempt from registration small, isolated transactions between private individuals. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Where transactions were "transactions pursuant to an offer" as contemplated by former § 23-42-102(10)(B) (see now subdivision (a)(9) of this section) and corporation did not file proof of exemption as required, transactions of corporation were not exempt from registration as isolated nonissuer transaction under subdivision (a)(1) of this section. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Joint Ventures.

Where sellers of joint venture interests in an apartment complex received consulting fees, and organized, constructed, managed and controlled the properties of the joint venture, the joint venture interests were not exempt from registration. *Schultz v. Rector-Phillips-Morse, Inc.*, 261 Ark. 769, 552 S.W.2d 4 (1977).

Proof of Exemption.

Contention of prosecution that exemption offered under this section is postponed unless and until the reasons set forth in the application as the basis for the exemption are true and are in good faith carried out was erroneous, since such interpretation would require, in effect, that the accused prove his innocence to avoid conviction, rather than the state being required to prove him guilty before obtaining a conviction. *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970).

Nowhere in subdivision (a)(9) and subsection (b) of this section is there language that could be reasonably construed to give the Commissioner the power to waive the requirement that a proof of exemption must be filed; and rule promulgated by Securities Commissioner exempting certain transactions from the registration and proof of exemption requirement of subsection (b) of this section was not a valid exercise of the rulemaking authority granted to the commissioner under § 23-42-503. *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Transactions Pursuant to Offers.

Stocks were held exempt under this section where less than 25 persons were offered the stock, the corporation believed the purchases were for investment, and the Arkansas Securities Commissioner had exempted the stock from registration. *Rucker v. La-Co, Inc.*, 496 F.2d 850 (8th Cir. 1974).

Because an option to purchase a security is an interest in the security, corporation, by agreeing to grant individual an option to purchase stock, made him an offer and, for the purposes of subdivision (a)(9) of this section, all subsequent payments to escrow account and other subsequent transactions between the parties and involving the exercise of the option were "transactions pursuant to an offer" as contemplated by former § 23-42-102(10)(B) (see now subdivision (a)(9) of this section). *Cole v. PPG Indus., Inc.*, 680 F.2d 549 (8th Cir. 1982).

Unlawful Sales.

Conviction of one charged with violation of § 23-42-501 and who defended on the ground that he had obtained an exemption for the security sold under subsection (a)(9) of this section was not sustained by evidence that the defendant had sold the security to persons who were not on the list of offerees filed with the Securities Commissioner in compliance with a rule of the commissioner. *Gaskin v. State*, 244 Ark. 541, 426 S.W.2d 407 (1968).

In a prosecution for knowingly selling unregistered securities, a verdict of guilty on counts of knowingly causing unregistered stocks to be sold was supported by evidence that sales were made before the application for exemption under this section, notwithstanding exemption was

thereafter obtained. *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970).

Cited: *Shepherd v. State*, 246 Ark. 744, 439 S.W.2d 627 (1969); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark.

320, 691 S.W.2d 853 (1985); *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997); *Hamby v. Clearwater Consulting Concepts, LLLP*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

23-42-505. Denial or revocation of exemption.

(a) The Securities Commissioner may, by order, deny or revoke any exemption specified in § 23-42-503(a)(7) or (8), (b), or (c) or § 23-42-504(a) with respect to a specific security or transaction.

(b)(1) No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section.

(2) Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing.

(c)(1) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

(2) If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(d) No order under this section may operate retroactively.

(e) No person may be considered to have violated § 23-42-501 or § 23-42-502 by reason of any offer or sale effected after the entry of an order under this section if he or she sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the order.

History. Acts 1959, No. 254, § 14; A.S.A. 1947, § 67-1248; Acts 1997, No. 1961, No. 248, § 7; 1977, No. 493, § 9; 173, § 22.

CASE NOTES

Proof of Exemption.

Contention of prosecution that exemption offered under this section is postponed unless and until the reasons set forth in the application as the basis for the exemption are true and are in good faith carried out was erroneous, since such interpretation would require, in effect, that the accused prove his innocence to avoid conviction, rather than the state being

required to prove him guilty before obtaining a conviction. *Gaskin v. State*, 248 Ark. 168, 450 S.W.2d 557 (1970).

Cited: *Gordon v. Matson*, 246 Ark. 533, 439 S.W.2d 627 (1969); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark. 320, 691 S.W.2d 853 (1985); *Hardcastle v. State*, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

23-42-506. Burden of proof of exemption.

In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History. Acts 1959, No. 254, § 14; 1961, No. 248, § 7; A.S.A. 1947, § 67-1248.

CASE NOTES

In General.

Proof of exemption must be filed with the commissioner to prove that the transaction was exempt. *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997).

Cited: *Gordon v. Matson*, 246 Ark. 533,

439 S.W.2d 627 (1969); *Long v. Mabry*, 250 Ark. 947, 470 S.W.2d 319 (1971); *J & C Inv. v. Mid-South Drilling, Inc.*, 286 Ark. 320, 691 S.W.2d 853 (1985); *F & M Bank v. Hamilton Hotel Partners Ltd. Partnership*, 702 F. Supp. 1417 (W.D. Ark. 1988).

23-42-507. Fraud or deceit in connection with offer, sale, or purchase of securities.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

History. Acts 1959, No. 254, § 1; A.S.A. 1947, § 67-1235.

capital development corporations, § 15-4-1022.

Cross References. Exemption for

RESEARCH REFERENCES

Ark. L. Rev. Wolff, The Unconstitutionality of the Arkansas Tender Statute, 36 Ark. L. Rev. 233.

CASE NOTES

ANALYSIS

Evidence.
Statute of Limitations.
Unethical Practices.
Untrue Statements.
Use of Mails.

Evidence.

Under §§ 23-42-210 and 25-15-212(h)(5), competing facts and substantial evidence covering falsified application,

overreached authority, excessive mark-ups, and securities churning were conclusive of agent's violative behavior. *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974).

In allowing testimony covering prior dealings involving stock transactions defendant had with other individuals, the court has two criteria as a guide: The previous conduct must not be too remote from the offense charged and it must be similar in nature to the event charged;

when such evidence is admitted it must be accompanied by a limiting instruction. *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50 (Ct. App. 1979), cert. denied, *Smith v. Arkansas*, 445 U.S. 905, 100 S. Ct. 1082, 63 L. Ed. 2d 321 (1980).

Statute of Limitations.

The evidence of defendant's actions in offering stock in a company that he founded on a fraudulent premise constituted the "last overt act in the furtherance of a scheme or course of conduct" which culminated in the sale of the stock and tolled the five-year statute of limitations. *Hunter v. State*, 330 Ark. 198, 952 S.W.2d 145 (1997).

Unethical Practices.

An agent instructed seller of bonds to draw the confirmation in agent's and buyer's name jointly in order to protect himself as to the collection of an extra fee, and this was held a dishonest practice. *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974).

Under former § 23-42-102(4) (see now § 23-42-102(5)), the Securities Commissioner was not limited to common law deceit in adjusting an agent's unethical practice. *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974).

Markup on bonds over cost held so excessive as to amount to fraud on clients. *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974).

Twenty-nine sales and purchases of bonds in a short time held violative of this section. *Selig v. Novak*, 256 Ark. 278, 506 S.W.2d 825 (1974).

Untrue Statements.

Evidence sufficient to find that it could not be held that the agent had made untrue statements or misrepresentations under the Securities Act, or the Franchise Practice Act, in order to induce prospective distributor into entering into distributorship agreement. *Kern v. Sells Enters., Inc.*, 271 Ark. 904, 612 S.W.2d 94 (1981).

Evidence sufficient to find statements untrue. *Hardcastle v. State*, 25 Ark. App. 157, 755 S.W.2d 228 (1988).

Use of Mails.

Contract for sale of securities made in Arkansas involving the use of the mails to clear check given by buyer to seller in the transaction was governed both by federal rule and by this Act for purposes of action wherein buyer sought recovery against seller under both for alleged fraud in the transaction. *Lane v. Midwest Bancshares Corp.*, 337 F. Supp. 1200 (E.D. Ark. 1972).

23-42-508. Market manipulation.

It is unlawful for any person, directly or indirectly, in this state:

(1) To effect any transaction in a security which involves no change in the beneficial ownership thereof, or to enter any orders for the purchase or sale of any security with the knowledge that orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale or purchase of the security, have been or will be entered by or for the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(2) To effect, alone or with one (1) or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others; or

(3) To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will, or is likely to, rise or fall because of market operations of any one (1) or more persons conducted for the purpose of raising or depressing the price of the security, if he or she is selling or offering to

sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from that person.

History. Acts 1971, No. 131, § 7; A.S.A. 1947, § 67-1263.

23-42-509. Covered securities.

(a) The Securities Commissioner, by rule or order, may require a notice filing consisting of any or all of the following documents with respect to a covered security under section 18(b)(2) of the Securities Act of 1933:

(1)(A) Prior to the initial offering of such a covered security in this state, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the covered securities are to be offered in this state, but the fee shall in no case be less than one hundred fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any portion of the fee in excess of one thousand dollars (\$1,000) shall be designated as special revenues and shall be deposited into the Securities Department Fund. When a notice filing is withdrawn before the effective date, the commissioner shall retain one hundred fifty dollars (\$150) of the filing fee.

(B) Sales of the covered securities in excess of the amount of covered securities to have been offered in this state shall require the person making the notice filing to pay a fee, calculated in the manner specified in subdivision (a)(1)(A) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person making the notice filing shall pay a penalty fee of two hundred dollars (\$200).

(C) The initial notice filing of an investment company, as defined in the Investment Company Act of 1940, shall be effective for a period commencing upon the commissioner's receipt of the notice filing, or, if not yet effective with the Securities and Exchange Commission, concurrently with the Securities and Exchange Commission effectiveness, and ending two (2) months after the investment company's fiscal year end. Thereafter, the investment company must renew the notice filing by submitting the appropriate forms and documents as filed with the Securities and Exchange Commission, along with the appropriate fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered, within two (2) months after the expiration of the registrant's fiscal year end.

(D) The notice filing of a unit investment trust, as defined in the Investment Company Act of 1940, shall be effective for one (1) year from the date of effectiveness granted by the Securities and Exchange Commission;

(2) After the initial offer of such covered securities in this state, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933;

(3) An annual or periodic report of the value of the covered securities offered or sold in this state as necessary to compute fees.

(b) A notice filing relating to a covered security may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective upon receipt by the commissioner. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered.

(c)(1) With respect to any security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such a covered security in this state, together with a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than one hundred dollars (\$100) or more than five hundred dollars (\$500).

(2) After the initial offer of such covered securities in this state, any amendment to SEC Form D filed with the Securities and Exchange Commission under the Securities Act of 1933 shall be filed concurrently with the commissioner.

(d) The commissioner, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a covered security under section 18(b)(3) or (b)(4) of the Securities Act of 1933, other than those securities under subsection (c) of this section, together with a fee in the amount of one hundred dollars (\$100).

(e) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that:

(1) The order is in the public interest; and

(2) There is a failure to comply with any condition established under this section.

(f) The commissioner, by rule or order, may waive any or all of the provisions of this section.

History. Acts 1997, No. 173, § 23; 1999, No. 363, § 4.

U.S. Code. The Securities Act of 1933, referred to in this section, is codified as 15

U.S.C. §§ 77a et seq. The Investment Company Act of 1940 is codified as 15

U.S.C. § 80a-1 et seq.

CASE NOTES

Cited: Hamby v. Clearwater Consulting Concepts, LLLP, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

CHAPTER 43
INVESTOR PROTECTION TAKEOVER ACT

SECTION.

23-43-101 — 23-43-117. [Repealed.]

23-43-101 — 23-43-117. [Repealed.]

Publisher's Notes. This chapter, concerning the Investor Protection Takeover Act, was repealed by Acts 2009, No. 533, § 1. The chapter was derived from the following sources:

23-43-101. Acts 1977, No. 730, § 1; A.S.A. 1947, § 67-1264.

23-43-102. Acts 1977, No. 730, § 1; 1979, No. 587, §§ 1, 2; A.S.A. 1947, § 67-1264.

23-43-103. Acts 1977, No. 730, § 14; A.S.A. 1947, § 67-1264.13.

23-43-104. Acts 1977, No. 730, § 15; A.S.A. 1947, § 67-1264.14.

23-43-105. Acts 1977, No. 730, § 11; A.S.A. 1947, § 67-1264.10.

23-43-106. Acts 1977, No. 730, § 13; A.S.A. 1947, § 67-1264.12.

23-43-107. Acts 1977, No. 730, § 13; A.S.A. 1947, § 67-1264.12.

23-43-108. Acts 1977, No. 730, § 7; A.S.A. 1947, § 67-1264.6.

23-43-109. Acts 1977, No. 730, § 9; A.S.A. 1947, § 67-1264.8.

23-43-110. Acts 1977, No. 730, § 2; A.S.A. 1947, § 67-1264.1.

23-43-111. Acts 1977, No. 730, § 3; A.S.A. 1947, § 67-1264.2.

23-43-112. Acts 1977, No. 730, § 6; 1979, No. 587, §§ 3-5; A.S.A. 1947, § 67-1264.5.

23-43-113. Acts 1977, No. 730, § 4; A.S.A. 1947, § 67-1264.3.

23-43-114. Acts 1977, No. 730, § 5; A.S.A. 1947, § 67-1264.4.

23-43-115. Acts 1977, No. 730, § 10; A.S.A. 1947, § 67-1264.9.

23-43-116. Acts 1977, No. 730, § 12; A.S.A. 1947, § 67-1264.11.

23-43-117. Acts 1977, No. 730, § 8; A.S.A. 1947, § 67-1264.7.

CHAPTER 44
COMMODITIES FUTURES

SECTION.

23-44-101. Definitions.

23-44-102. Penalties.

23-44-103. Requirements for validity of contracts.

23-44-104. Recovery of advances under contract.

23-44-105. Bucket shop contracts void.

23-44-106. Bucket shops prohibited.

23-44-107. Exchanges and boards of

SECTION.

trade — Organization — Records.

23-44-108. Exchanges and boards of trade — Use of public or private wires.

23-44-109. Written statement to be furnished upon demand — Effect of noncompliance.

Effective Dates. Acts 1929, No. 208, § 12; approved Mar. 27, 1929. Emergency

clause provided: "This act being necessary for the immediate preservation of public

health, peace and safety an emergency is declared and it shall take effect and be in force immediately after its passage.”

RESEARCH REFERENCES

Am. Jur. 38 Am. Jur. 2d, Gambling, § 198 et seq. **C.J.S.** 38 C.J.S., Gaming, § 9 et seq.

CASE NOTES

In General.

This chapter was taken from the laws of Oklahoma and an opinion by the Supreme Court of that state construing this chapter

delivered prior to its adoption in this state would be given great weight. *Orvis Bros. & Co. v. Oliver*, 197 Ark. 307, 123 S.W.2d 1065 (1938).

23-44-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Bucket shop” means any place of business wherein contracts are made of the sort or character denounced by § 23-44-105;
- (2) “Contract for sale” means sales, purchases, agreements of sale, agreements to sell, and agreements to purchase; and
- (3) “Person” means individuals, associations, partnerships, and corporations.

History. Acts 1929, No. 208, §§ 1, 5; Pope’s Dig., §§ 3342, 3346; A.S.A. 1947, §§ 68-1001, 68-1005.

23-44-102. Penalties.

(a)(1) Any person, acting either as agent or principal, who knowingly enters into or assists in making any contracts of sale of the sort or character denounced by § 23-44-105, for the future delivery of cotton, grain, stocks, or other commodities or who maintains or operates a bucket shop as that term is defined in § 23-44-101 shall be guilty of a felony and upon conviction shall be fined in a sum not to exceed one thousand dollars (\$1,000) or be imprisoned in the penitentiary not exceeding two (2) years.

(2) Any person who shall be guilty of a second offense under this section, in addition to the penalties above prescribed, and upon conviction, may be both fined and imprisoned in the discretion of the court.

(b)(1) If a corporation commits the acts prohibited by subsection (a) of this section, it shall be liable to forfeiture of all its rights and privileges as a corporation, and the continuance of the establishment after the first conviction shall be deemed a second offense.

(2) It shall be the duty of the Attorney General to institute proceedings for the forfeiture of the charter of any corporation making itself liable to forfeiture under the provisions of this chapter.

History. Acts 1929, No. 208, § 7; Pope's Dig., § 3348; A.S.A. 1947, § 68-1007.

23-44-103. Requirements for validity of contracts.

(a) All contracts of sale for future delivery of cotton, grain, stocks, or other commodities shall be valid and enforceable in the courts of this state, according to their terms, if they are:

(1) Made in accordance with the rules of any board of trade, exchange, or similar institution where the contracts of sale are executed;

(2) Actually executed on the floor of the board of trade, exchange, or similar institution and performed or discharged according to the rules thereof; and

(3) Made with or through a regular member in good standing of a cotton exchange, grain exchange, or similar institution organized under the laws of the State of Arkansas or any other state.

(b) However, contracts of sale for future delivery of cotton, in order to be valid and enforceable, must not only conform to the requirements of subsection (a) of this section, but must also be made subject to the provisions of the United States Cotton Futures Act. If this clause should for any reason be held inoperative, then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirement of subsection (a) of this section.

History. Acts 1929, No. 208, § 2; Pope's Dig., § 3343; A.S.A. 1947, § 68-1002. Futures Act, referred to in this section, is codified as 7 U.S.C. § 15b et seq.

U.S. Code. The United States Cotton

CASE NOTES

ANALYSIS

In General.
Applicability.

In General.

Contracts for future delivery of cotton in conformity with the requirements of this section were valid and enforceable and not

gambling transactions. *Orvis Bros. & Co. v. Oliver*, 197 Ark. 307, 123 S.W.2d 1065 (1938).

Applicability.

This section does not apply to contracts for future delivery of actual commodities. *J.L. McEntire & Sons v. Hart Cotton Co.*, 256 Ark. 937, 511 S.W.2d 179 (1974).

23-44-104. Recovery of advances under contract.

Any broker, agent, or any other person making advances to, or for account of, any party to any contract falling within and satisfying the provisions of § 23-44-103 shall be entitled to recover the amount of the advances from the party to, or for the account of, whom the advances were made.

History. Acts 1929, No. 208, § 3; Pope's Dig., § 3344; A.S.A. 1947, § 68-1003.

23-44-105. Bucket shop contracts void.

Any contract of sale for the future delivery of cotton, grain, stocks, or other commodities which is to be settled according to, or upon the basis of, the public market quotation or prices made on any board of trade, exchange, or similar institution, upon which contracts of sale for future delivery are executed and dealt in without any actual bona fide execution and the carrying out or discharge of the contracts upon the floor of the exchange, board of trade, or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this state, and no action shall lie thereon at the suit of any party thereto.

History. Acts 1929, No. 208, § 4; Pope's Dig., § 3345; A.S.A. 1947, § 68-1004.

CASE NOTES**ANALYSIS**

Evidence.
Indictment.

Evidence.

Conviction could be had on proof that one of the parties to the transaction did not, in good faith, intend actual delivery at the time the contract was made. *Huff v. State*, 164 Ark. 211, 261 S.W. 654 (1924) (decision under prior law).

Indictment.

An indictment charging that the defendant became a party to an unlawful contract to buy bales of cotton to be settled on margin, without any intention of the cotton being actually delivered, was sufficient. *Huff v. State*, 164 Ark. 211, 261 S.W. 654 (1924) (decision under prior law).

23-44-106. Bucket shops prohibited.

The maintenance or operation of a bucket shop at any point in this state is prohibited.

History. Acts 1929, No. 208, § 5; Pope's Dig., § 3346; A.S.A. 1947, § 68-1005.

23-44-107. Exchanges and boards of trade — Organization — Records.

(a) There may be organized, in any city, town, or municipality in the State of Arkansas, voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade, or similar institutions to receive and post quotations on cotton, grains, stocks, bonds, and other commodities for the benefit of their members and other persons engaged in the production of cotton, grain, and other commodities.

(b) The associations shall be composed of not fewer than twenty-five (25) active members and shall adopt a uniform set of rules and regulations not inconsistent with the laws of Arkansas and of the United States.

(c) They shall open their books to the inspection of proper courts and officers of the law when required.

History. Acts 1929, No. 208, § 8; Pope's Dig., § 3349; A.S.A. 1947, § 68-1008.

23-44-108. Exchanges and boards of trade — Use of public or private wires.

(a) Only members of cotton exchanges, grain exchanges, boards of trade, or similar institutions organized under the laws of Arkansas or any other state may provide for their use, and the use of their clients, private or public wires from cities in Arkansas where the cotton exchanges, grain exchanges, boards of trade, or similar institutions are located to other cities outside the State of Arkansas where cotton exchanges, grain exchanges, boards of trade, or similar institutions are operated.

(b) They may receive over the private or public wires, and post for their own use and that of their clients and of any person engaged in the production of cotton, grain, or other commodities, market quotations and market news covering cotton, grain, stock, and other commodities. They may also transmit, for execution, contracts of sale for future delivery.

(c) In all cases it is contemplated that the delivery of the commodity purchased or sold, as the case may be, will be carried out by the principals or other successors or assignees and that the contract for delivery thereof will be performed or discharged according to the rules of the exchange, board of trade, or similar institution where the contract is executed.

History. Acts 1929, No. 208, § 9; Pope's Dig., § 3350; A.S.A. 1947, § 68-1009.

23-44-109. Written statement to be furnished upon demand — Effect of noncompliance.

(a) Every person shall furnish, upon demand, to any principal from whom that person has executed any contract or sale for the future delivery of any cotton, grain, stocks, or other commodities, a written instrument setting forth the name and location of the exchange, board of trade, or similar institution upon which the contract has been executed, the date of execution of the contract, and the name and address of the persons with whom the contract was executed.

(b) If the person shall refuse or neglect to furnish the statement upon reasonable demand, the refusal or neglect shall be prima facie evidence that the contract was an illegal contract within the provisions of § 23-44-105, and that the person who executed it was engaged in the maintenance and operation of a bucket shop subject to the penalty provided by § 23-44-102.

History. Acts 1929, No. 208, § 6; Pope's Dig., § 3347; A.S.A. 1947, § 68-1006.

CHAPTER 45
ARKANSAS BANKING CODE OF 1997

SECTION.

- 23-45-101. Short title.
- 23-45-102. Definitions.
- 23-45-103. Effect on existing financial institutions.
- 23-45-104. Unauthorized activity as a financial institution — Incorporation of industrial

SECTION.

- loan institutions prohibited — Individuals and partnerships not to transact general commercial banking business.
- 23-45-105. Headings.
- 23-45-106. Rules of construction.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on June 1, 1997 and that this act should become effective prior to the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 408, § 24: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 become effective on June 1, 1997 and that this act should become effective prior to the effective date of those certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003."

RESEARCH REFERENCES

Am. Jur. 10 Am. Jur. 2d, Banks, § 17 et seq.
Ark. L. Rev. Watkins, Access to Public

Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.
C.J.S. 97 C.J.S. Witn., § 25.

23-45-101. Short title.

Chapters 45-50 of this title may be referred to as the "Arkansas Banking Code of 1997".

History. Acts 1997, No. 89, § 1.

23-45-102. Definitions.

(a) Subject to other definitions contained in subsequent sections of the Arkansas Banking Code of 1997, and unless the context otherwise requires, in the Arkansas Banking Code of 1997:

(1) "Affiliate" means, with respect to a specified person, a person that controls, is controlled by, or is under common control with another person;

(2) "Arkansas bank" means a bank whose home state is Arkansas;

(3) "Arkansas bank holding company" means a bank holding company that controls one (1) or more state banks. As used in this subdivision (a)(3), "control" has the meaning set forth in 12 U.S.C. § 1841(a)(2);

(4) "Arkansas Banking Code of 1997" means the Arkansas Banking Code of 1997, chapters 45-50 of this title;

(5)(A) "Bank" means a state bank or a national bank or an out-of-state state-chartered bank that has received a certificate of authority under § 23-48-1001.

(B) "Bank" shall also include any foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(6)(A) "Bank holding company" means any company, foreign or domestic, including a bank:

(i) That directly or indirectly owns, controls, or holds with power to vote twenty-five percent (25%) or more of the voting shares of any bank;

(ii) That controls in any manner the election of a majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent (25%) or more of the voting shares of any bank or a bank holding company is held by trustees.

(B) Notwithstanding the foregoing:

(i) No company shall be a bank holding company by virtue of its ownership or control of shares that are acquired by it in connection with its underwriting of securities and that are held only for such period of time as will permit the sale thereof upon a reasonable basis; and

(ii) No company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of the solicitation.

(C) As used in this definition of “bank holding company”, “company” means any corporation, limited liability company, or business trust doing business in this state but does not include any corporation the majority of the shares of which are owned by the United States or by any state;

(7) “Banking board” means the State Banking Board;

(8) “Bank premises” includes the state bank’s or subsidiary trust company’s main office site, all branch and other lawful office sites, the main office building and all other branch and other lawful office buildings, any or all of which may have additional space for occupancy by tenants, and any parking areas or parking structures that constitute adjuncts to any of the state bank or subsidiary trust company property;

(9) “Bank supervisory agency” means:

(A) Any agency of another state with primary responsibility for chartering and supervising banks; and

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and their successors;

(10) “Capital base” means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the Bank Commissioner may by regulation prescribe;

(11) “Capital development company” means a company authorized to be organized under the provisions of the Arkansas Capital Development Company Act, § 15-4-1001 et seq.;

(12) “Commissioner” means the Bank Commissioner;

(13) “Court” means a court of competent jurisdiction;

(14) “Day” means a calendar day;

(15) “Department” means the State Bank Department of this state;

(16) “Department regulations” or “department regulation” means regulations promulgated by the commissioner with the approval of the State Banking Board;

(17) “Deposit” and “deposit account” mean the unpaid balance of money or its equivalent received or held by a bank in the usual course of its banking business and which represents a liability of the bank, for which it has given or is obligated to give credit, either conditionally or unconditionally, to a checking, savings, time or similar account, or that is evidenced by its certificate of deposit or similar certificate or a check or draft drawn against a deposit account and certified by the bank or a draft or cashier’s, officer’s, or traveler’s check or money order or similar instrument on which the bank is primarily liable, and that has not been paid and other obligations or instruments of a bank that may be included in the definition of “deposit” or “deposit account” in department regulations;

(18)(A) “De novo charter” means a charter for a bank that has been in existence for less than five (5) years, but it does not include a charter that is issued in connection with the acquisition of assets or liabilities from a predecessor financial institution.

(B) A bank resulting from the conversion of a savings and loan association to a bank, from the conversion of a state bank to a

national bank, or from the conversion of a national bank to a state bank shall be deemed to have been in existence, for the purpose of determining whether it has a de novo charter, from the date the converting institution came into existence;

(19) "Depository institution" means any bank, savings and loan association, state or federal credit union, or any corporation that the commissioner determines to be operating in substantially the same manner as such entities;

(20) "Federal financial institutions' regulatory agency" means the Federal Reserve System, including its Board of Governors, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision [abolished], or their successors;

(21) "Financial institution" means any state bank, registered out-of-state bank, bank holding company, trust company, or subsidiary trust company;

(22) "Home state" means:

(A) With respect to a state-chartered bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; and

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. § 3103(c);

(23) "Home state regulator" means, with respect to an out-of-state state-chartered bank, the bank supervisory agency of the state in which the bank is chartered;

(24) "Host state" means a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch;

(25) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets including all or substantially all of the branches and the assumption of all or substantially all of the liabilities of a bank whose home state is different from the home state of the acquiring bank;

(26) "Main banking office" or "main office", with respect to a bank, means the main banking office designated or provided for in the articles of incorporation of a state bank, and the main office designated or provided for in the articles of association of a national bank, at such identified location as shall have been or as hereafter may be approved by the commissioner, in the case of a state bank, or by the appropriate federal regulatory agency, in the case of a national bank;

(27) "Merging bank" means a bank that is a party to a merger or an interstate merger transaction and that is not the resulting bank;

(28) "National bank" means a national banking association organized pursuant to 12 U.S.C. § 21-215(b);

(29) "National trust company" means a company organized under the laws of the United States to conduct trust business and business

incidental to trust business in this state or of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company that also owns, directly or indirectly, an affiliated bank as defined in § 23-47-801 et seq.;

(30) "Order" means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the commissioner or the State Banking Board, of any matter other than the making of regulations of general application;

(31) "Out-of-state bank" means a bank whose home state is any state other than Arkansas;

(32) "Out-of-state state-chartered bank" means any bank chartered under the laws of any state other than Arkansas;

(33) "Person" means an individual, corporation, partnership, joint venture, trust, estate, limited liability company or other unincorporated association, or any other legal or commercial entity;

(34) "Predecessor financial institution" means a depository institution whose charter ceased to exist in connection with the purchase of its assets or the assumption of its liabilities by a successor bank;

(35) "Registered out-of-state bank" means an out-of-state bank that has a certificate of authority pursuant to the terms of § 23-48-1001 et seq.;

(36) "Resulting bank" means:

(A) One (1) or more banks created from a merger or conversion; or

(B) The bank purchasing over fifty percent (50%) of the assets or assuming over fifty percent (50%) of the liabilities of another depository institution in a purchase or assumption transaction or an interstate merger transaction;

(37) "Safe deposit box" means a safe, box, or other receptacle for the safekeeping of property, that is located on a bank's premises and leased by the bank to a lessee;

(38) "Savings and loan association" means a corporation carrying on the business of a savings and loan association or a building and loan association under a charter issued by this state, or any federal savings association or federal savings bank which is chartered under federal law;

(39) "State bank" means:

(A) A corporation created pursuant to either Acts 1913, No. 113, or Acts 1969, No. 179, or pursuant to any predecessor or successor act or acts of either of the foregoing, and existing and authorized under the laws of this state on May 30, 1997, to engage in a general commercial banking business; and

(B) A corporation organized under the provisions of this chapter and authorized thereunder to engage in a general commercial banking business; and

(40) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101 et seq. and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of

1989, § 23-32-1901 et seq. [repealed], to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company that also owns, directly or indirectly, an affiliated bank as that term is defined in § 23-47-801 et seq.

(b) For the purposes of defining, “home state”, “host state”, “home state regulator”, “out-of-state bank”, and “out-of-state state-chartered bank”, the term “state” means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Marianas Islands.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 1; 1999, No. 113, § 1; 2003, No. 860, § 12; 2007, No. 170, §§ 3, 4.

A.C.R.C. Notes. The Office of Thrift Supervision referred to in this section was abolished by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

Publisher’s Notes. Acts 1913, No. 113, referred to in this section, is codified as § 16-110-406. Acts 1969, No. 179, also

referred to in this section, was codified as §§ 23-31-401 — 23-31-406 [repealed]. Former §§ 23-31-401 — 23-31-406 were repealed by Acts 1997, No. 89, § 3.

Amendments. The 2007 amendment deleted “provided that the charter of the bank selling its assets is surrendered as a part of the transaction” at the end of (25); in (36), redesignated the provisions as (A) and (B) and substituted “One (1) or more banks created from” for “the bank resulting from” in present (36)(A); and made related and stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Business Law, 27 U. Ark. Little Rock L. Rev. 593.

23-45-103. Effect on existing financial institutions.

(a) The charters of state banks existing at the time of the adoption of the Arkansas Banking Code of 1997 shall continue in full force and effect, and all financial institutions and, to the extent applicable, all national banks and national trust companies, shall hereafter be operated in accordance with the provisions of the Arkansas Banking Code of 1997, and other applicable law.

(b) Except as otherwise provided in the Arkansas Banking Code of 1997, the repeal of any provision of chapters 30-34 of this title at the time of adoption of the Arkansas Banking Code of 1997 shall not affect any right accrued or established, or any liability or penalty incurred, under such provision, prior to the repeal thereof.

(c) All powers granted in the Arkansas Banking Code of 1997 may be freely exercised by any financial institution to which such powers apply without the necessity of amending its articles of incorporation, unless such articles expressly prohibit the exercise of such powers.

History. Acts 1997, No. 89, § 1.

section is codified as chapters 45-50 of this title.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

23-45-104. Unauthorized activity as a financial institution — Incorporation of industrial loan institutions prohibited — Individuals and partnerships not to transact general commercial banking business.

(a) From and after May 31, 1997:

(1) It shall be unlawful for any person, by whatever name called, to do business as a bank within this state or to maintain any office in this state for the purpose of doing such business, except state banks, registered out-of-state banks, and national banks chartered to do business in this state;

(2)(A) No certificate of incorporation for a new state bank in this state shall be issued, and no new state bank shall be permitted to engage in business within Arkansas except by permission of the Bank Commissioner and upon approval of an application for a new state bank charter by the commissioner and the State Banking Board.

(B) The issuance of the certificate shall be within the sole discretion of the commissioner and the board, and the giving of the permission shall be within the sole discretion of the commissioner;

(3) Whenever it shall appear to the commissioner that any person is conducting business as a state bank without authority, the commissioner may determine that the person is fully subject to the commissioner's supervisory and regulatory powers and to the provisions of the Arkansas Banking Code of 1997;

(4) No new industrial loan institution shall be incorporated in this state; and

(5) No partnership or individual or other unincorporated person may lawfully transact a general commercial banking business in this state.

(b) Nothing in this section shall be construed to prohibit or interfere with the operations of duly and lawfully organized savings and loan associations or credit unions qualified to do business in this state.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 2; 1997, No. 940, § 112.

A.C.R.C. Notes. As amended by Acts 1997, No. 940, subdivisions (a)(4) and (5) read as follows:

"(4) No new industrial loan institution shall be incorporated in this state after the effective date of the Arkansas Banking Code.

"(5) No partnership or individual, or other unincorporated person, may lawfully transact a general commercial banking business in this state after the effective date of the Arkansas Banking Code."

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this section is codified as chapters 45-50 of this title.

23-45-105. Headings.

The headings and captions contained in this chapter are for convenience only, do not constitute any part of the statutes composing this

code, and shall not be used in construing or interpreting the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

section is codified as chapters 45-50 of this title.

23-45-106. Rules of construction.

(a)(1) Unless otherwise specifically indicated, and to the fullest extent permitted by the Arkansas Constitution, any reference in the Arkansas Banking Code of 1997 to an existing state or federal statute or regulation shall mean to the statute or regulation as it has been or may in the future be amended or supplemented.

(2) If in any case the construction is not constitutionally permissible, the reference shall mean to the statute or regulation as it existed on May 31, 1997.

- (b) Unless the context otherwise requires:
- (1) Any reference in the Arkansas Banking Code of 1997 to “applicable law”, “existing law”, or similar references, shall encompass the laws of the executive, legislative, and judicial branches of the appropriate jurisdiction;

(2) Any reference in the Arkansas Banking Code of 1997 to the discretion of the Bank Commissioner shall mean the sole, uncontrolled discretion of the commissioner; and

(3) Any reference in the Arkansas Banking Code of 1997 to the Federal Deposit Insurance Corporation shall also reference any successor thereof.

History. Acts 1997, No. 89, § 1.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

section is codified as chapters 45-50 of this title.

CHAPTER 46

STATE BANK DEPARTMENT AND STATE BANKING BOARD

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BANK DEPARTMENT.
3. STATE BANKING BOARD.
4. PROCEEDINGS BEFORE STATE BANKING BOARD AND BANK COMMISSIONER.
5. REPORTS AND EXAMINATIONS.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on

June 1, 1997 and that this act should become effective prior to the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

Acts 1997, No. 408, § 24: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 become effective on June 1, 1997 and that this act

should become effective prior to the effective date of those certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-46-101. Confidential records.

Effective Dates. Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan

funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

23-46-101. Confidential records.

(a) Notwithstanding the Freedom of Information Act of 1967, § 25-19-101 et seq., the following records of the State Bank Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with department regulations:

- (1) All examination reports filed with the department;
- (2) All records disclosing information obtained from examinations;
- (3) Investigations and reports revealing facts concerning a financial institution, a capital development company, or the customers of these organizations; and
- (4) All personal financial statements submitted to the department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may be disclosed, in the Bank Commissioner’s discretion, as follows:

(1) Under a validly issued subpoena and in the interest of justice, the commissioner may waive the privilege created in this section and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the financial institution; and

(3) To state and federal regulatory agencies with jurisdiction over financial institutions or entities engaging in financial activities, including, but not limited to, insurance and securities brokerage and underwriting.

(c) The commissioner shall have the power to promulgate regulations with regard to disclosure of confidential information.

History. Acts 1997, No. 89, § 1; 2001, No. 1056, § 1; 2003, No. 860, § 13.

SUBCHAPTER 2 — STATE BANK DEPARTMENT

- SECTION.
- 23-46-201. Creation.
 - 23-46-202. Offices.
 - 23-46-203. Seal — Evidentiary effect — Fees.
 - 23-46-204. Bank Commissioner — Appointment and removal.
 - 23-46-205. Bank Commissioner — Powers and duties.
 - 23-46-206. Employment and duties of staff generally.
 - 23-46-207. Interests in financial institutions prohibited.

- SECTION.
- 23-46-208. Employee bonds.
 - 23-46-209. Records and financial reports — Disposition of funds.
 - 23-46-210. Annual and biennial reports of Bank Commissioner.
 - 23-46-211. Retention of State Bank Department records.
 - 23-46-212. Emergency powers of Bank Commissioner — Legislative findings and intent — Definitions.

Effective Dates. Acts 2007, No. 426, § 5: Mar. 22, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an immediate and urgent need to provide for the acquisition and efficient means of financing adequate facilities for housing the operations of the State Bank Department; that the shortage of safe, efficient, modern, and environ-

mentally safe facilities impedes the orderly operation of the department and threatens the essential governmental function of the department; that the continuation of these conditions is inimical to the health, safety, public morals, welfare, and economic security of the inhabitants of this state; and that these conditions can be remedied or alleviated through the powers and authority provided by this act.

Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-46-201. Creation.

There is created and established, at the seat of government of this state, a department to be known as the State Bank Department.

History. Acts 1997, No. 89, § 1.

23-46-202. Offices.

(a) The State Bank Department may own, acquire, construct, reconstruct, extend, equip, improve, maintain, operate, lease, contract concerning, or otherwise deal in and with any lands, improvements, buildings, furniture, furnishings, machinery, and personal property of any and every nature whatever, that can be used by the department for suitable offices for the business of the department, with the necessary conveniences for the transaction of business and the safekeeping of the records of the department.

(b) The department is authorized and empowered to obtain the necessary funds to accomplish the purposes stated in subsection (a) of this section from any source or sources necessary, including without limitation contracting with the Arkansas Building Authority or the Arkansas Development Finance Authority to provide for the issuance of bonds under the State Agencies Facilities Acquisition Act of 1991, § 22-3-1401 et seq., or the Arkansas Development Finance Authority Act, § 15-5-101 et seq., § 15-5-201 et seq., and § 15-5-301 et seq.

(c)(1) Bonds and interest on the bonds issued under this section shall be payable solely from and secured by a pledge of the fees and revenues deposited into an account designated as the State Bank Department Building Fund in accordance with § 23-46-209(a).

(2) The pledged fees and revenues are specifically declared to be cash funds, restricted in their use, and dedicated solely for the purposes set forth in this subchapter.

(3) The Arkansas Development Finance Authority is authorized and empowered to make a pledge of the fees and revenues in the resolution authorizing the issuance of the bonds under this section.

History. Acts 1997, No. 89, § 1; 2007, No. 426, § 1.

added the (a) designation, rewrote (a), and added (b) and (c).

Amendments. The 2007 amendment

23-46-203. Seal — Evidentiary effect — Fees.

(a) An appropriate seal shall be procured to be the official seal for the State Bank Department.

(b) Every paper executed by the Bank Commissioner in pursuance of the authority conferred upon him or her by law and sealed with the seal of the department or certified by the department shall be received in evidence and recorded in the proper recording offices in the same manner as deeds regularly acknowledged.

(c)(1) Whenever it is necessary for the commissioner to approve any instrument and to affix the official seal thereto, the commissioner shall charge a fee as provided by regulation for affixing his or her approval and the official seal to the instrument.

(2) Copies of all records and papers in the office of the department certified by the commissioner and authenticated by the seal shall be received in evidence in all cases equally and of like effect as the originals thereof.

(3) Whenever it is proper to furnish a copy of any paper filed in the department and to certify that paper, the commissioner may charge a fee as provided by department regulation.

History. Acts 1997, No. 89, § 1.

23-46-204. Bank Commissioner — Appointment and removal.

(a) The Governor, by and with the advice and consent of the Senate, shall appoint a Bank Commissioner who shall:

(1) Be a resident of this state;

(2) Be at least thirty (30) years of age; and

(3) Have not less than five (5) years' experience either in practical banking or in the bank department of a state.

(b) The commissioner shall be the head of the State Bank Department and shall hold his or her office for the term of four (4) years beginning from the date of actual appointment by the Governor and expiring four (4) years from that date and until a successor is appointed.

(c) The commissioner may be removed by the Governor from office for neglect of duty, malfeasance, misfeasance, extortion or corruption in office, incompetency, or mental or physical disability to such an extreme as to render the commissioner unable or unfit for the discharge of his or her duties, or for any offense involving moral turpitude while in office committed under color of or connected with such an office.

(d) In the event there shall be an inability to serve in the office caused by death, suspension, removal, disability, disqualification, or resignation of the commissioner, a deputy commissioner previously designated by the commissioner shall exercise the powers and perform the duties of the commissioner until a successor is appointed by the Governor, with the advice and consent of the Senate, who shall serve for the remainder of the unexpired term fixed by law.

History. Acts 1997, No. 89, § 1.

23-46-205. Bank Commissioner — Powers and duties.

(a) The Bank Commissioner shall be charged with the general supervision of financial institutions, the execution of all laws passed by the State of Arkansas relating to the organization, operations, inspection, supervision, control, liquidation, and dissolution of banks, bank holding companies, subsidiary trust companies, and the general commercial banking business of Arkansas, and such other duties as prescribed by law.

(b)(1) The commissioner shall have the power to issue such rules and regulations as may be necessary or appropriate to carry out the intent and purposes of all those laws and to issue cease and desist orders against any financial institution, or an officer, director, or employee of any financial institution, found to be violating federal banking laws or regulations, violating the banking laws of this state or State Bank Department regulations, violating any regulatory agreement, or jeopardizing the safety and soundness of any financial institution.

(2)(A) The commissioner may issue rules or regulations only with the approval and consent of the State Banking Board, but he or she shall have the power to issue cease and desist orders upon his or her own motion.

(B) Nothing in this section shall be construed to curtail the commissioner's power to issue emergency rules and regulations with the approval and consent of the board.

(3)(A) Any person subject to a cease and desist order issued by the commissioner who refuses or fails to comply with the terms of the order may be assessed a monetary penalty for the failure to comply with the provisions of the cease and desist order after a ten-day notice given by the commissioner to the institution or person subject to the order.

(B) The amount of the monetary penalty shall not exceed one thousand dollars (\$1,000) per day of violation against each institution and each officer, director, or employee contributing to the institution's or the individual's failure to comply with the provisions of the cease and desist order.

(C) Subject to such a limitation, the amount of the monetary penalty shall be determined by the commissioner.

(4) The commissioner has grounds for and may issue a cease and desist order for the permanent or temporary removal of an officer, director, employee, agent, or any other person participating in the affairs of or otherwise connected with a financial institution, or any affiliate thereof, subject to the supervision of the commissioner from service to any institution or affiliate subject to the supervision of the commissioner if he or she is found by the commissioner to be or to have been:

(A) Violating state or federal law, rules and regulations of a federal financial institution's regulatory agency, or State Bank Department regulations;

(B) Acting incompetently, recklessly, or dishonestly;
(C) Indicted of a crime involving moral turpitude; or
(D) Otherwise impairing the safety and soundness of the financial institution.

(5)(A) Any person aggrieved and directly affected by an order of the commissioner issued pursuant to this section is entitled to judicial review.

(B) A person so aggrieved may seek judicial review by petition to a circuit court having jurisdiction in the matter.

(C) The petition must be filed within thirty (30) days from the date of issuance of the order.

(D) If no petition for review is filed within thirty (30) days from the date of issuance of the order, the order may not be appealed and is permanently binding upon the person until terminated by the commissioner.

(c) State Bank Department regulations shall be distributed, in form and method selected by the commissioner, to all state banks chartered in the State of Arkansas.

(d) In addition to other powers, the commissioner shall have the power and authority to:

(1) Inspect and copy all books, records, and other information relating to the financial institutions he or she regulates;

(2) Restrict withdrawal of deposits from state banks under extraordinary circumstances;

(3) Subpoena witnesses, compel their attendance, require production of evidence, and administer oaths;

(4) Approve or disapprove applications for new state bank charters or branch facilities in connection with failed institutions as provided in § 23-48-511;

(5) Approve or disapprove applications for voluntary liquidations as provided in § 23-49-119;

(6) Define any term or phrase used in the Arkansas Banking Code of 1997 which is not defined by the Arkansas Banking Code of 1997;

(7) Issue orders or declaratory statements, disseminate information, and otherwise exercise discretion to effectuate the purposes of the Arkansas Banking Code of 1997 and all laws described in subsection (a) of this section, and to interpret and implement the provisions of those laws consistently with such purposes;

(8) Authorize state banks to engage in any banking activity in which national banks are authorized or may hereafter be authorized by federal legislation or regulations to engage;

(9) Cooperate with federal financial institutions' regulatory agencies;

(10)(A) Perform preemployment state criminal background checks through the Department of Arkansas State Police and preemployment federal criminal background checks through the Federal Bureau of Investigation on all applicants selected for employment as examiners with the State Bank Department.

(B) The federal background check shall include taking fingerprints of the applicant.

(C) The applicant shall sign a release authorizing the Department of Arkansas State Police and the Federal Bureau of Investigation to disclose criminal history information about the applicant to the State Bank Department.

(D) The commissioner shall treat the information as confidential and shall disclose the information only to the applicant; and

(11) Approve and execute on behalf of the State Bank Department:

(A) An agreement issuing bonds under § 23-46-202; and

(B) Any documents necessary for issuing bonds under § 23-46-202.

(e)(1) As soon as practicable after acceptance of any application referred to either in the Arkansas Banking Code of 1997 or in State Bank Department regulations for filing, regardless of whether the application is of a type referred to in § 23-46-403, and receipt of the filing fee therefor, the commissioner shall cause the merits of the application to be investigated.

(2) The investigation shall enable the commissioner to determine the fitness of the applicants and shall address all questions which bear directly or indirectly upon the appropriateness of granting the application and the need from the public standpoint for granting the application.

(3) To the extent that the commissioner deems it appropriate, the scope of the commissioner's investigation of any application may include:

(A) The investigation of those matters described in § 23-48-304 pertaining to applications for new state bank charters; and

(B)(i) The performance of state criminal background checks through the Department of Arkansas State Police and federal criminal background checks through the Federal Bureau of Investigation.

(ii) The federal background check shall include the taking of fingerprints.

(iii) The applicant shall sign a release authorizing the Department of Arkansas State Police and the Federal Bureau of Investigation to disclose criminal history information about the applicant to the State Bank Department.

(iv) The commissioner shall treat the information as confidential and shall disclose the information only to the applicant.

(v) The background checks shall be used to determine the applicant's fitness to participate in the affairs of a state bank.

(f) A criminal background check obtained under this section shall be destroyed by the commissioner within six (6) months of the commissioner's receipt of the background check.

History. Acts 1997, No. 89, § 1; 2005, No. 1528, § 1; 2007, No. 426, § 2.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

section is codified as chapters 45-50 of this title.

Amendments. The 2007 amendment added (d)(11).

23-46-206. Employment and duties of staff generally.

(a)(1) The Bank Commissioner shall employ from time to time the assistants, examiners, clerks, stenographers, counsel, and other personnel as he or she may find necessary to properly and efficiently discharge the duties of his or her office.

(2) The commissioner shall be authorized to set minimum qualifications for these persons and to fix their levels of compensation within the limitations of the numbers of employees and the appropriations for their salaries as provided from time to time by acts of the General Assembly, provided he or she shall incur no expense until an appropriation shall have been made therefor nor in excess of the revenues of the State Bank Department.

(b) Counsel employed by the commissioner shall advise the commissioner in all legal matters affecting the department.

(c) Notwithstanding any other provisions of state law, and in order to maintain the confidentiality of information and the security of department personnel in the performance of their duties, the commissioner shall be authorized to establish travel reimbursement guidelines for payment of expenses of department personnel incurred in the performance of their duties.

(d) If the commissioner is not himself or herself at any time available for the transaction of any specific matter committed by law to his or her authority or discretion, any one of the deputy commissioners, or any other staff member so designated by the commissioner in writing, may transact such matter in the name and stead of the commissioner.

(e)(1) The commissioner, each member of the State Banking Board, the deputy commissioners, chief examiners, counsel, each examiner, each accountant, each attorney, and each other officer, person, or employee, or both, of or for the department shall not be personally liable for damages occasioned by his or her official acts or omissions, except when the acts or omissions are corrupt and malicious.

(2) The Attorney General shall defend any action brought against any of the above-mentioned persons by reason of his or her official acts or omissions, regardless of whether at the time of institution of the action the defendant has terminated his or her service with the department.

History. Acts 1997, No. 89, § 1.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas title.

Banking Code of 1997 referred to in this

23-46-207. Interests in financial institutions prohibited.

(a)(1) No employee or officer of the State Bank Department who participates in the examination of a financial institution, or who may be called upon to make an official decision or determination affecting the operation of a financial institution, shall be an officer, director, attorney, owner, or holder of stock in any state bank, registered out-of-state bank, or bank holding company which controls a state bank or a registered

out-of-state bank, or receive, directly or indirectly, any payment or gratuity from any such organizations.

(2) A person subject to this section may not borrow money from a state bank or registered out-of-state bank which is an out-of-state state-chartered bank except as provided in subsection (b) of this section.

(b) A person subject to this section may:

(1) Be a depositor in any financial institution that the department regulates and participate in such overdraft programs associated with such deposit relationships as the commissioner may, by regulation, allow; and

(2) Purchase banking services, other than credit services, under rates and terms generally available to other customers of the financial institution.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 3.

23-46-208. Employee bonds.

(a) All employees shall be required to furnish bonds in such amounts as the Bank Commissioner shall deem sufficient to cover the liabilities of their respective positions, which bonds may be made by any guaranty company authorized to do business in this state.

(b)(1) The fees paid by any officer or employee of the State Bank Department to any guaranty or bonding company for a fidelity bond shall be considered and charged as expenses of the department.

(2) However, the expense of any fidelity bond written on a special deputy commissioner appointed as special liquidating agent for an insolvent state bank or subsidiary trust company shall be paid out of the assets of the insolvent state bank or subsidiary trust company.

(c) No expense shall be incurred until an appropriation shall be made for such a purpose, and in no case shall any liability be created for the state in excess of the appropriation therefor.

History. Acts 1997, No. 89, § 1.

23-46-209. Records and financial reports — Disposition of funds.

(a)(1) The Bank Commissioner shall keep a true and perfect record of all of the business of the State Bank Department and shall make monthly reports to the Auditor of State of all fees he or she collects.

(2)(A) From the fees or other revenues collected, the commissioner:

(i) Shall deposit directly into the State Bank Department Building Fund the amount due, if any, for the annual rental under any lease or annual principal and interest payments under any bonds related to the acquisition of any properties under § 23-46-202; and

(ii) May deposit directly into the State Bank Department Building Fund an additional annual amount not to exceed ten percent (10%) of the original principal amount of any bonds related to the acquisition of any properties under § 23-46-202.

(B) The commissioner shall make the payments under this subdivision (a)(2) from the moneys received by the department prior to the payment of any of the moneys into the State Treasury.

(C) Upon the discharge of all bonds and leases authorized by § 23-46-202, the commissioner shall deposit into the State Bank Department Building Fund an amount deemed necessary by the commissioner for the operation and maintenance of the department's properties and the establishment and maintenance of appropriate reserves for the repair and replacement of the properties acquired under § 23-46-202.

(D) All fees collected by the commissioner required for the payments under this subdivision (a)(2) are specifically declared to be cash funds and may be collected and deposited into banks and depositories selected by the commissioner.

(3) The commissioner shall promptly pay to the Treasurer of State all fees not necessary for the payments required by subdivision (a)(2) of this section, taking duplicate receipts therefor, one (1) of which shall be filed with the Auditor of State.

(b) All fees and other revenues received by the department not necessary for the payments required by subdivision (a)(2) of this section shall be deposited into the State Treasury as special revenues and credited to the Bank Department Fund to be used solely for the payment of the expenses of the department pursuant to the appropriations therefor.

(c) Upon proper voucher from the commissioner, the Auditor of State shall issue the Auditor of State's warrant on the Treasurer of State in payment of all salaries and other expenses incurred in the administration of the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1; 2007, No. 426, § 3.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this section is codified as chapters 45-50 of this title.

Amendments. The 2007 amendment rewrote (a); inserted "not necessary for

the payments required by subdivision (a)(2) of this section" following "department" in (b); and in (c), substituted "Upon proper voucher from the commissioner, the Auditor of State shall" for "The Auditor of State shall, upon proper voucher from the commissioner" and deleted "his" following "issue."

23-46-210. Annual and biennial reports of Bank Commissioner.

(a) The Bank Commissioner shall make an annual report to the Governor of the work and the business of the State Bank Department, which shall embrace a statement of all receipts and expenditures and the name, officers, directors, domicile, capital, surplus, net profits, and deposits of each state bank, in the state, and such other information as the commissioner deems advisable.

(b) He or she shall also, biennially, make a detailed estimate of the expenses of the department for the two (2) succeeding fiscal years.

History. Acts 1997, No. 89, § 1.

23-46-211. Retention of State Bank Department records.

(a) The State Bank Department shall retain its general records for at least ten (10) years, with the following exceptions:

(1) Transcripts of hearings before the State Banking Board or the Bank Commissioner shall be retained for at least three (3) years;

(2) Applications submitted to the department shall be retained for at least three (3) years; and

(3) Articles of incorporation and amendments thereto and stock transfer certificates and approvals shall be retained permanently, except in cases in which the records concern a bank which has been merged, sold, or liquidated, in which cases the records shall be retained for at least five (5) years.

(b)(1) In lieu of retention of the original records thereof, the department may cause any or all of its records and records held at any time in its custody to be photographed or otherwise reproduced in permanent form.

(2) Any photograph or other reproduction shall have the same force and effect as the original thereof and be admitted into evidence equally as with the original.

History. Acts 1997, No. 89, § 1.

23-46-212. Emergency powers of Bank Commissioner — Legislative findings and intent — Definitions.

(a) The General Assembly:

(1) Finds that in the event of an emergency, the Bank Commissioner should be authorized to take appropriate action to expedite the recovery of a community affected by the emergency and to encourage banks to meet the credit, deposit, and other financial needs of the community; and

(2) Intends by the enactment of this section to authorize the commissioner when warranted by a state of emergency to assist the affected community by:

(A) Declaring with the consent of the Governor a state of emergency;

(B) Temporarily modifying or suspending banking laws, regulations, or requirements; and

(C) Taking any other action appropriate to assist affected banks so that:

(i) Customary banking services can continue to be provided; and

(ii) Financial stability can be maintained.

(b) As used in this section:

(1) "Affected area" means the geographic location described in a proclamation by the commissioner declaring a state of emergency;

(2) "Affected bank" means a bank with an office in the geographic location described in a proclamation by the commissioner declaring a state of emergency;

(3) "Office" means a physical location where a bank transacts business or conducts banking operations;

(4) "Officer" means:

(A) A person designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank under this section; or

(B) The president or other person in charge of an office if:

(i) A designation under subdivision (b)(4)(A) of this section has not been made; or

(ii) An officer designated under subdivision (b)(4)(A) of this section is not available; and

(5)(A) "State of emergency" means a natural or man-made occurrence or condition that may:

(i) Affect the ability of a bank to conduct normal business operations; or

(ii) Pose a threat to the safety or security of a person or property.

(B) "State of emergency" includes without limitation an occurrence or condition caused by:

(i) A natural disaster;

(ii) A tornado;

(iii) A storm;

(iv) A flood;

(v) High water;

(vi) An earthquake;

(vii) A drought;

(viii) A fire;

(ix) An act of war, rebellion, violent demonstration, or terrorism; or

(x) A robbery of a bank or other financial institution.

(c)(1) In addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of a situation or condition beyond the bank's control, the commissioner may with the Governor's consent declare by written proclamation that a state of emergency exists in all or part of the state.

(2) The proclamation and any order issued under this section:

(A) Shall be published on the commissioner's website; and

(B) May be disseminated in any other manner deemed appropriate by the commissioner under the circumstances.

(d)(1) If the commissioner declares a state of emergency under this section, the commissioner may authorize an affected bank by written order to:

(A) Close an office within the affected area; and

(B) Keep the office closed for a reasonable amount of time until the office can be reopened.

(2) A bank that closes an office under this section shall notify the commissioner as promptly as conditions permit by any means reasonably available of the:

(A) Reason for closing the office; and

(B) Expected length of time the office will be closed.

(3) If an office is closed under this section:

(A) Each day that the office is closed shall be treated for banking purposes as a legal holiday; and

(B) An affected bank or a director, officer, or employee of an affected bank shall not be because the office is closed:

(i) Incur any liability; or

(ii) Forfeit any legal or equitable rights.

(e)(1)(A) If the commissioner finds that an affected bank closed an office as a result of a state of emergency and that the opening of a temporary office by the affected bank will help meet the credit, deposit, and other financial needs of the customers of the affected area, the commissioner may authorize the affected bank by written order to open a temporary office either within the state or at a location in another state.

(B) The temporary office may be a mobile branch, temporary office space, or any other facility approved by the commissioner.

(2) The formal application process, requirements, and fees for opening a temporary office may be suspended when a state of emergency exists.

(3) A temporary office opened under this section may remain open until the commissioner with the consent of the Governor declares that the state of emergency no longer exists unless written permission to remain open is granted by the commissioner upon application by an affected bank to establish an office at the site of the temporary office.

(f)(1) An order issued by the commissioner under this section becomes effective upon issuance and continues for one hundred twenty (120) days or unless terminated sooner by the commissioner.

(2) The commissioner may extend an order issued under this section for an additional period not to exceed one hundred twenty (120) days if the commissioner with the consent of the Governor finds that the existing state of emergency continues or that a new state of emergency exists.

(g) The commissioner may by rule:

(1) Adopt additional procedures to implement this section; and

(2) Impose sanctions under § 23-46-205 for a violation of this section.

History. Acts 2009, No. 233, § 1.

SUBCHAPTER 3 — STATE BANKING BOARD

SECTION.

23-46-301. Creation — Members — Administration.

23-46-302. Special State Banking Board members.

23-46-303. Study of banking statutes.

SECTION.

23-46-304. Powers of State Banking Board — Filings with Bank Commissioner.

23-46-305. Applications.

23-46-301. Creation — Members — Administration.

(a) There is created a commission which shall be known as the "State Banking Board".

(b)(1) The board shall be composed of six (6) members appointed by the Governor, subject to confirmation by the Senate, for terms of five (5) years or until a successor has been appointed and qualified.

(2)(A) At the time of their appointment, all members of the board shall be, and shall continue thereafter to be, residents of the State of Arkansas.

(B) They shall be age thirty (30) or over.

(3) Board members serving on May 30, 1997, shall continue to serve the remainder of their terms.

(c)(1)(A) For purposes of filling vacancies on the board, members shall be numbered one (1) through six (6), inclusive.

(B)(i) Three (3) members shall be designated banker members, two (2) members shall be designated public members, and one (1) member shall be designated as the representative of the elderly.

(ii) A banker member is a person whose primary occupation is banking. A public member is a person whose primary occupation is outside the field of banking. The representative of the elderly shall be sixty (60) years of age or older and shall not be actively engaged in or retired from the occupation of banking.

(C) One (1) of the banker members shall be designated the State Bank Department member, and the other two (2) shall be designated the Arkansas Bankers Association members. These positions are to be determined by lot.

(2) On the occasion of a vacancy on the board of a department member, a successor shall be selected from among two (2) or more bankers whose names shall be supplied by the Bank Commissioner.

(3) On the occasion of a vacancy on the board of one (1) of the Arkansas Bankers Association banker members, a successor shall be selected from among two (2) or more bankers whose names shall be supplied by the Arkansas Bankers Association.

(4) The Governor shall make the appointment of all successor board members from among those persons recommended as provided in this section, provided that the board shall consist of one (1) member from each of the four (4) congressional districts as prescribed in § 7-2-101 et seq., and two (2) members from the state at large, one (1) of whom shall be the representative of the elderly.

(d)(1) No member of the board shall receive, directly or indirectly, any compensation or recompense for his or her services on the board.

(2) Notwithstanding § 25-16-901 et seq., should any member of the board live outside the capital city of the state, he or she may, upon application to the commissioner, be reimbursed out of the income of the office of the commissioner and in the manner provided by law for the actual travel and subsistence expense as may actually have been incurred by him or her in connection with attendance at any meeting of the board.

(e) The office of the commissioner shall be the office of the board.

(f) The board may select as its secretary, a deputy bank commissioner, or a stenographer employed in the office of the commissioner, but no compensation shall be paid to any person whatsoever for services rendered as secretary of the board.

(g)(1) Except as provided in § 23-46-402, the presence at any meeting of at least four (4) members of the board shall be necessary to constitute a quorum, and the concurring votes of not less than a majority of the members present at any meeting shall be necessary to the decision of any question or issue or the authorization of any action.

(2) The representative of the elderly shall be a full voting member.

History. Acts 1997, No. 89, § 1.

23-46-302. Special State Banking Board members.

(a) When any member of the State Banking Board is disqualified for any reason to hear and participate in the determination of any matter pending before the board, the Governor shall appoint a qualified person to hear and participate in the decision on the particular matter.

(b) The special board member so appointed shall have all authority and responsibility of a regular board member with respect to the particular matter before the board but shall have no authority or responsibility with respect to any other matter before the board.

History. Acts 1997, No. 89, § 1.

23-46-303. Study of banking statutes.

The State Banking Board is authorized, at such times as it deems appropriate, to request a review or study of state banking law and to recommend any changes that it may deem appropriate to the Governor.

History. Acts 1997, No. 89, § 1.

23-46-304. Powers of State Banking Board — Filings with Bank Commissioner.

(a) In addition to all other powers conferred by Arkansas law, the State Banking Board shall have the power and duty to:

(1) Approve or disapprove all applications for charters for new state banks, except applications for new state bank charters in connection with failed institutions as provided in § 23-48-511;

(2) Approve or disapprove all applications for the merger or consolidation of one (1) or more banks, out-of-state banks, or savings and loan associations into a state bank;

(3) Approve or disapprove all applications for the purchase by one (1) state bank of over fifty percent (50%) of the assets of another depository institution, and all applications for the assumption by one (1) state bank of over fifty percent (50%) of the liabilities of another depository institution;

(4) Approve or disapprove all applications by a savings and loan association to convert to a state bank;

(5) Approve or disapprove all applications for amendments to the articles of incorporation of an existing state bank;

(6) Approve or disapprove all applications for the relocation of a state bank's main office from one (1) municipality to another;

(7) Approve or disapprove all rules and regulations promulgated by the Bank Commissioner;

(8) Authorize a state bank under circumstances in which it is not given authority under state law to participate in any public agency hereinafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to banks or trust companies, and to authorize compliance with all requirements and conditions imposed upon the participants;

(9) Subpoena witnesses; and

(10) Require such clerical and technical assistance as is necessary or appropriate to carry out its duties.

(b) Upon the submission to it by the commissioner of each application, the board shall review the results of the commissioner's investigation and make further investigation, if any, that it may deem appropriate to enable it to determine the fitness of the applicants, the need from the public standpoint for the granting of the application, and all other questions, whether or not of like kind with those referred to in this section, which bear directly or indirectly upon the need or desirability from the public standpoint for the granting of the application.

(c)(1) Filing with the commissioner of any application or document required by the Arkansas Banking Code of 1997 or by department regulations shall be public notice of the matters contained in that application or document.

(2) The commissioner shall maintain the applications or documents in his or her custody.

(3) Upon request, the commissioner shall provide verification of the filing and reasonable access to inspection by the public.

(4) Nothing in this section shall be construed to modify the prohibitions upon the disclosure of confidential information contained in § 23-46-101 or the commissioner's authority to issue regulations concerning the disclosure of confidential information.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 4. Banking Code of 1997 referred to in this section is codified as chapters 45-50 of this title.

Publisher's Notes. The Arkansas

23-46-305. Applications.

(a) All applications which the State Banking Board is empowered to consider for approval or disapproval shall, as soon as practicable, be submitted by the Bank Commissioner to the board for consideration at a regular meeting of the board or at a special meeting called for the purpose thereof.

(b) Applications of the types described in § 23-46-304(a)(1)-(4) must demonstrate that the applicant has the minimum amount of capital that the commissioner may require.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 4 — PROCEEDINGS BEFORE STATE BANKING BOARD AND BANK COMMISSIONER

SECTION.

23-46-401. Applicability.
23-46-402. Meetings of board — Notice.
23-46-403. Applications.
23-46-404. Applications fees — Bank
Commissioner's regula-
tions.

SECTION.

23-46-405. Investigation — Notice of
hearing.
23-46-406. Hearing.
23-46-407. Decision — Judicial review.

23-46-401. Applicability.

Nothing in this subchapter is intended to have any application to:

(1) A merger under which a state bank merges into a national bank which is an Arkansas bank;

(2) Any consolidation proceeding under which a state bank becomes consolidated into a national bank which is an Arkansas bank; or

(3) Any proceeding under which a state bank is converted into a national bank or a national bank is converted into a state bank.

History. Acts 1997, No. 89, § 1; 1997,
No. 408, § 5.

23-46-402. Meetings of board — Notice.

(a)(1) The Chair of the State Banking Board or the Bank Commissioner may call a special meeting of the board upon notice through a personal communication with each member of the board by telephone or through a written notice transmitted by ordinary, certified, or registered mail, personal delivery, overnight delivery, or telefacsimile directed to each member of the board at his or her business or residence address as shown on the records of the board.

(2) The records of the State Bank Department shall affirmatively reflect the time and manner in which the meeting was called and notice thereof given.

(b) The board members may waive any notice of a special meeting by signing a written consent to the holding of the meeting or by appearing at the meeting and participating therein.

(c) In the instances in which notice of a special meeting is not waived by the board members, the notice shall be given to the board members at least fourteen (14) days before the meeting.

(d)(1) If at any time it is impossible for the commissioner or the chair to give notice of a meeting to board members because of the death,

disability, or absence from the state of the members, a meeting of the board may be called by notice given to the members who are available.

(2) In this event, the unanimous action of three (3) of the members who were so served with notice shall be the action of the board.

(3) This rule shall also be applicable in situations in which, under subsection (g) of this section, the board is permitted to act informally without a fixed meeting.

(e) The board may also hold regular meetings on dates fixed in its procedures, policies, and regulations.

(f)(1) The board may permit any or all of its members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting.

(2) A member participating in a meeting by this means is deemed to be present in person at the meeting.

(g)(1) Matters other than applications described in § 23-46-403 requiring the board's consideration and which are not contested may, in the commissioner's discretion, be considered by the board through mailing or delivering of all necessary documents and correspondence to all board members, no formal meeting being necessary.

(2) Applications submitted to the board according to this procedure must be filed with the commissioner for at least three (3) days prior to submission to the board with no protest's having been filed.

(3) Where the application is thus submitted, the written approval or disapproval endorsed upon the application, or a copy thereof, and transmitted to the commissioner by at least four (4) members of the board shall represent the action of the board.

History. Acts 1997, No. 89, § 1.

23-46-403. Applications.

When any of the following applications are filed with the Bank Commissioner, the sponsors of the applications shall give notice of filing in accordance with State Bank Department regulations:

(1) An application for the issuance of a new state bank charter;

(2) An application for the merger or consolidation of one (1) or more banks into a state bank;

(3) An application for the merger or consolidation of one (1) or more savings and loan associations into a state bank;

(4) An application for the purchase by one (1) state bank of greater than fifty percent (50%) of the assets of another depository institution or an application for the assumption by one (1) state bank of greater than fifty percent (50%) of the liabilities of another depository institution; or

(5) An application for the change of a state bank's place of business from one municipality to another.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 2; 2001, No. 63, § 1. to this section deleted all references to applications previously listed in this section.

A.C.R.C. Notes. The 1999 amendment

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

23-46-404. Applications fees — Bank Commissioner's regulations.

(a) The State Banking Board shall have the power to set and impose fees for any and all applications, regardless of whether the applications are of a type described in § 23-46-403, which are reasonably calculated to defray the costs associated with the consideration, investigation, and processing of those applications.

(b)(1) The Bank Commissioner may issue rules and regulations specifying the circumstances under which any application must be filed and the procedural and substantive requirements governing the filing of any and all applications of whatever type.

(2) The commissioner may also issue rules and regulations requiring the submission of applications that are not described in the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this title.

23-46-405. Investigation — Notice of hearing.

(a) When the departmental investigation pursuant to § 23-46-205 or § 23-48-304 is closed and the application fees have been paid, an application filed pursuant to § 23-46-403 shall be referred to the State Banking Board for consideration by it and the Bank Commissioner at a public hearing.

(b) Notice of the time, place, and purpose of the meeting shall be given at least thirty (30) days before the hearing as follows:

(1) By letter from the commissioner to the sponsors of the application and to any protestant that has filed an official written protest to the application; and

(2) By release to news media.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 3.

23-46-406. Hearing.

(a)(1) No person shall appear in opposition to the application unless the person has filed a written protest to the application within fifteen (15) days after the actual filing of the application.

(2) The protest must be accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for each protestant, such amount to be set by State Bank Department regulation.

(b) At the hearing all persons sponsoring the application and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.

(c) The Bank Commissioner will participate with the State Banking Board in the hearing.

(d) The board or the commissioner may subpoena witnesses on their own motion or on the request of any party to the proceedings.

(e)(1) The admission of evidence at the hearing shall be controlled by § 25-15-213. The parties shall have the right to cross-examine witnesses.

(2) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the board's specialized knowledge.

(3) The parties may bind themselves by stipulation.

(f) The applicant shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the applicant to furnish at least one (1) copy of the transcript to the commissioner free of charge.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 4.

23-46-407. Decision — Judicial review.

(a) The State Banking Board shall render its decision in writing at or after a hearing before it, which decision shall include the board's findings of fact and conclusions of law.

(b)(1)(A) If the application is approved by the board, the Bank Commissioner may, in the event that he or she also shall approve the application, grant the relief sought.

(B) If the commissioner does not concur in the board's grant of the application, the relief sought shall not be granted, and the commissioner's written decision stating his or her reasons for not concurring shall be attached to the copy of the board's decision and shall be mailed to each person who actively appeared and participated in the hearing.

(2) If the board shall disapprove the application, the commissioner shall not grant the relief sought.

(c)(1) The time for filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the date the final decision of the board is mailed or delivered in written form to the parties desiring to appeal.

(2) The hearing of the petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 5 — REPORTS AND EXAMINATIONS

SECTION.

- 23-46-501. Call for reports.
- 23-46-502. Statement on call.
- 23-46-503. When examinations made.
- 23-46-504. Examination of affiliates.
- 23-46-505. Noncompliance with banking law — Special examinations.
- 23-46-506. Examination procedure.
- 23-46-507. Information furnished state or federal agencies.

SECTION.

- 23-46-508. Noncooperation with examiners.
- 23-46-509. Assessment fees, application fees, and other department fees.
- 23-46-510. Failure to make report or pay fees — Penalty.
- 23-46-511. Retention of records.
- 23-46-512. Changes in chief executive officer and directors.

23-46-501. Call for reports.

The Bank Commissioner shall have power to call for reports from state banks and subsidiary trust companies whenever deemed necessary, in order to obtain a full and complete knowledge of their condition or the status of their reserves, but he or she shall call upon each of them for at least two (2) reports each year.

History. Acts 1997, No. 89, § 1.

23-46-502. Statement on call.

(a) Every state bank and subsidiary trust company operating under the supervision of the Bank Commissioner shall make to the commissioner, whenever required by him or her, a statement of its assets and liabilities as shown by its records at the close of business on the day designated, which day shall be prior to the call of the commissioner.

(b) The commissioner shall not give notice to any person whomsoever of the date on which he or she will call for the statement.

(c) The reports shall be verified by the institution's president, or a vice president, and in addition thereto, shall be attested by not fewer than two (2) directors.

(d)(1) The reports required by this section shall embrace the amount of paid-up capital, surplus, net undivided profits, deposits, and all other liabilities of whatsoever character.

(2)(A) It shall also state the amount loaned upon real estate, notes, bills of exchange, overdrafts, bonds, and other securities, stating the actual market value of the bonds or securities, the amount invested in real estate for banking premises, other real estate owned, when and how acquired, and the actual cost, cash on hand and on deposit in other banks, subject to check, with the amount and character of all other assets, together with such other information as the commissioner may require.

(B) Any commercial or other unsecured paper past due twelve (12) months on which the interest is unpaid and not in process of collection shall not be included as an asset in the report.

History. Acts 1997, No. 89, § 1.

23-46-503. When examinations made.

(a) The Bank Commissioner shall, as often as may be deemed necessary or proper, appoint suitable persons to make an examination of each state bank or subsidiary trust company.

(b)(1) A thorough examination into the affairs of each state bank or subsidiary trust company shall be made at least once every twenty-four-month period. Provided, however, the twenty-four-month period may be extended to a thirty-six-month period if an interim thorough examination is performed by the state bank's or subsidiary trust company's primary federal regulatory authority.

(2) The commissioner may authorize examinations at more frequent intervals if he or she shall deem it proper.

History. Acts 1997, No. 89, § 1.

23-46-504. Examination of affiliates.

The Bank Commissioner may make at any time, and from time to time, such examinations of the affairs of affiliates of state banks or of affiliates of subsidiary trust companies as shall be necessary to disclose fully the relations between the state banks and their affiliates or between the subsidiary trust companies and their affiliates, and the effect of those relations on the affairs of the state banks or subsidiary trust companies.

History. Acts 1997, No. 89, § 1.

23-46-505. Noncompliance with banking law — Special examinations.

Whenever it shall come to the knowledge of the Bank Commissioner that any state bank or subsidiary trust company has failed or refused to comply with any of the provisions of the Arkansas Banking Code of 1997, with any provision of federal law or federal regulations applicable to financial institutions, with any department regulations, or with any direction of the commissioner made specifically to that state bank or subsidiary trust company as a result of an examination into its affairs, he or she is authorized, as a penalty for that failure or refusal, to make a special examination of the state bank or subsidiary trust company, to charge and collect the same fees therefor as for a regular examination, and to continue such examinations and charges at intervals of thirty (30) days or less until such provisions, regulations, and directions are complied with.

History. Acts 1997, No. 89, § 1.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

section is codified as chapters 45-50 of this title.

23-46-506. Examination procedure.

(a) The Bank Commissioner or any examiner appointed by him or her shall have power to make a thorough examination of all the records and affairs of any state bank, any Arkansas bank holding company, or any subsidiary trust company.

(b)(1) In making examinations, the representative of the State Bank Department may examine under oath any stockholder, director, officer, agent, clerk, or other employee or representative of the state bank, Arkansas bank holding company, or subsidiary trust company, or any other person, touching the matters he or he may be authorized to inquire and examine into.

(2)(A) He or she may subpoena and, by attachment, compel the attendance of any person in this state to testify under oath before him or her in relation to the affairs of the state bank, Arkansas bank holding company, or subsidiary trust company.

(B) All witnesses who appear in obedience to a subpoena shall be entitled to and shall receive the same per diem fees and mileage as witnesses in civil cases in the circuit courts of this state.

(c)(1) The representative of the department making the examination shall make a detailed report of the financial institution so examined, which report shall be filed in the office of the commissioner.

(2) All comments or criticisms contained in each report shall be presented to the board of directors by the management of the financial institution so examined promptly after receipt thereof.

History. Acts 1997, No. 89, § 1.

23-46-507. Information furnished state or federal agencies.

(a) The Bank Commissioner may share with or furnish to any state or federal examiner or regulatory agency with jurisdiction over any financial institution or other entity conducting financial activities, including, but not limited to, insurance or securities brokerage or underwriting, copies of any or all examinations or any information with reference to the condition of the affairs of any state bank, subsidiary trust company, or other institution which the State Bank Department regulates.

(b) The commissioner is authorized to enter into cooperative arrangements with state and federal regulatory agencies to achieve the purposes of the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1; 2001, Banking Code of 1997 referred to in this section is codified as chapters 45-50 of this title.

Publisher's Notes. The Arkansas

23-46-508. Noncooperation with examiners.

(a) The Bank Commissioner may revoke a state bank's or subsidiary trust company's authority to transact business and may proceed to

wind up its business whenever any officer of the state bank or subsidiary trust company:

(1) Refuses to submit the books, papers, and effects thereof to the inspection of the commissioner or examiners;

(2) In any manner obstructs or interferes with the commissioner, or examiner, in the discharge of his or her duties; or

(3) Refuses to be examined on oath touching the affairs of the financial institution.

(b) The commissioner may issue a cease and desist order whenever an officer of any financial institution acts in any manner described in subsections (a)(1)-(3) of this section.

History. Acts 1997, No. 89, § 1.

23-46-509. Assessment fees, application fees, and other department fees.

(a) Every state bank and subsidiary trust company shall pay to the State Bank Department, within ten (10) days after notice from the Bank Commissioner in the months of January and July of each year, an assessment fee which will be charged in accordance with an assessment fee schedule approved by the commissioner.

(b) The commissioner, with the approval of the State Banking Board, shall also have the authority to establish a schedule of fees to be charged by the department relative to applications which are reviewed by the department, as well as a schedule of other fees to be charged for service performed by the department.

(c) For each examination made in excess of two (2) per year, the state bank or subsidiary trust company so examined shall pay an additional assessment equal to the January assessment of the year in which the excess examination is made.

(d)(1) The assessments provided for in this section may be reduced by the commissioner if the assessments, with other fees received by the department, produce a greater sum than is required to pay the expenses of the department.

(2) The assessments may be increased if not sufficient in connection with other fees received as aforesaid to defray the expenses of the department.

History. Acts 1997, No. 89, § 1.

23-46-510. Failure to make report or pay fees — Penalty.

(a) Any financial institution that refuses or fails, for thirty (30) days after notice from the Bank Commissioner, to make any report to the commissioner, or fails to pay any fees for ten (10) days after the date of notice by the commissioner, shall be given an additional notice through personal service or by letter from such person of the office of the commissioner as the commissioner may designate.

(b)(1) If the failure continues for ten (10) days after the receipt of the additional notice, then the commissioner may assess a monetary penalty against the financial institution for each separate failure or refusal of one hundred dollars (\$100) each day for the first thirty (30) days after receiving the notice of delinquency from the commissioner and one thousand dollars (\$1,000) per day of violation for every day thereafter.

(2) Alternatively, in the case of a state bank or subsidiary trust company, if the failure continues for ten (10) days after the receipt of the additional notice, the commissioner may take charge of the state bank or subsidiary trust company, as provided in case of insolvency.

History. Acts 1997, No. 89, § 1.

23-46-511. Retention of records.

(a) Every state bank or subsidiary trust company shall retain its business records for periods that are or may be prescribed by or in accordance with the terms of this section.

(b) Each state bank or subsidiary trust company shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, and all records which the Bank Commissioner and the State Banking Board shall, in accordance with the terms of this section, require to be retained permanently.

(c) All records other than those described in subsection (b) of this section shall be retained for periods that the commissioner and board, in accordance with the terms of this section, shall prescribe.

(d) The commissioner shall issue regulations, with the approval of the board, prescribing the period for which records must be maintained. The periods may be permanent or for a term of years.

(e) Any state bank or subsidiary trust company may dispose of any records which have been retained for the period prescribed in accordance with the terms of this section and shall, after it has disposed of a record, thereafter be under no duty to produce the record in any action or proceeding.

(f)(1) In lieu of retention of the original records, any state bank or subsidiary trust company may cause any or all of its records, and records held at any time in its custody, including those held by it as a fiduciary, to be photographed or otherwise reproduced in permanent form.

(2) Any photograph or other reproduction shall have the same force and effect as the original thereof and be admitted into evidence equally as with the original.

History. Acts 1997, No. 89, § 1.

23-46-512. Changes in chief executive officer and directors.

Every financial institution shall report promptly to the Bank Commissioner any change for whatever reason in the chief executive officer and directors, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer and directors.

History. Acts 1997, No. 89, § 1.

CHAPTER 47
BANK POWERS — SUBSIDIARIES

SUBCHAPTER.

1. POWERS GENERALLY.
2. DEPOSITS.
3. AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT.
4. INVESTMENTS.
5. LOANS.
6. SUBSIDIARIES.
7. TRUST POWERS.
8. SUBSIDIARY TRUST COMPANIES.
9. SAFE-DEPOSIT FACILITIES.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on June 1, 1997 and that this act should become effective prior to the effective date

of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

SUBCHAPTER 1 — POWERS GENERALLY

SECTION.

- 23-47-101. Powers of state banks generally.
- 23-47-102. Acquisition and disposition of own stock.

SECTION.

- 23-47-103. Acquisition of bank premises.
- 23-47-104. Prohibition on engaging in business as real estate salespersons or brokers.

Effective Dates. Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infra-

structure development; that as a result of the lack of available capital sources, the state has suffered economic losses because of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan

funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken, the state will suffer further irreparable loss as a result of the continued inability

to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

23-47-101. Powers of state banks generally.

(a) Subject to any State Bank Department regulations and consistent with any restrictions imposed by the Arkansas Banking Code of 1997, each state bank shall, unless it shall be determined to be unsafe and unsound by the Bank Commissioner, and without specific mention thereof in its articles of incorporation, have the following powers and be permitted, in addition to other powers conferred upon it by other provisions of law:

(1) To receive by any means money for deposit and to provide by its rules or by agreement for the terms of withdrawal and payment of interest thereon pursuant to the provisions of § 23-47-201 et seq.;

(2) To receive by any means money for transmission to another person and to transmit money by any means to another person;

(3) To buy, sell, and exchange coin and bullion;

(4) To buy, sell, and exchange bonds and certificates of indebtedness issued or guaranteed by the United States, its agencies and instrumentalities thereof, the State of Arkansas or of any other state, or of any city, county, school district, or other municipal corporation, improvement district, public facilities board, or other agencies or instrumentalities of such state or states;

(5) To purchase and sell securities, other than bonds and certificates of indebtedness described in subdivision (a)(4) of this section, and stock without recourse, solely upon the order and for the account of customers and other persons, and in no case for its own account;

(6) To purchase, sell, and exchange for its own account securities pursuant to the provisions of § 23-47-401;

(7) To lend money, either without security or upon the security that the bank may require, pursuant to the provisions of § 23-47-501 et seq.;

(8) To issue capital notes, with or without conversion features, with the prior written approval of the commissioner, and to otherwise become indebted to other persons through other types of obligations, including purchase money obligations, leases, Federal Home Loan Bank and Federal Reserve Bank advances, federal funds transactions, and securities repurchase agreements, all without limitations on interest rates and term;

(9) To have such amounts of authorized but unissued stock as it may deem appropriate;

(10) To purchase insurance, including key-man insurance, and to establish employee and director benefit plans including, without limitation, stock options and stock purchase and compensation plans;

(11) To own and lease personal property acquired upon the specific request and for the use of a customer and to incur obligations incident thereto, the lease obligation to be subject to borrower loan limits and to a schedule of periodic regular rental payments that shall be consistent with a timely recovery by the bank of its cost for the leased property;

(12) To make contributions to or for the benefit of the following:

(A) The United States, any state, territory, or political subdivision thereof, the District of Columbia, or any possession of the United States, for exclusively public purposes;

(B) A corporation, foundation, trust, community chest, or other organization created or organized in the United States, or any state or territory, or the District of Columbia, or any possession of the United States, exclusively for religious, charitable, scientific, veteran rehabilitation service, civic enterprise, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or

(C) Other lawful expenditures, contributions, and donations, to the extent authorized, approved, or ratified by action of the board of directors of the bank, except as otherwise specifically provided or limited by its articles of incorporation, its bylaws, or by resolution adopted by its stockholders;

(13) To service loans made by it or by others, whether or not held by the bank;

(14) To warehouse or act as agent in warehousing mortgages and other loans;

(15) With the prior approval of the commissioner and subject to such conditions as may be prescribed by the commissioner, to provide messenger service between the bank and its customers;

(16) To engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary pursuant to the provisions of § 23-47-601;

(17) To invest in bank service companies pursuant to the provisions of § 23-47-603;

(18) To invest in a capital development company pursuant to the provisions of § 23-47-604;

(19) To invest in a community development company pursuant to the provisions of § 23-47-605;

(20) To invest in small business investment companies and minority enterprise small business investment companies as defined by the Arkansas Development Finance Authority Small Business Act of 1989, § 15-5-701 et seq., pursuant to the provisions of § 23-47-606;

(21) To invest in corporations organized under the Edge Act, pursuant to the provisions of § 23-47-607;

- (22) To operate a travel agency;
 - (23) To engage in leasing real property;
 - (24) To act as escrow agent and closing agent;
 - (25) To act as a fiscal or transfer agent, assignee, receiver, and depository;
 - (26) To act as an executor, administrator, trustee, or other fiduciary pursuant to the provisions of § 23-47-701 et seq.;
 - (27) To guaranty signatures;
 - (28) To provide third-party payment services;
 - (29) To issue, advise, and confirm letters of credit;
 - (30) To act as an agent to collect checks, drafts, and other items of commercial paper, to become a member of a clearing house, and to grant security interests in its assets for its qualification therein;
 - (31) To receive property as custodian for safekeeping;
 - (32) To lease safe-deposit boxes pursuant to the provisions of § 23-47-901 et seq.;
 - (33) To enter into agreements to provide for losses arising from the cancellation of outstanding loans upon the death of borrowers;
 - (34) Through a separate subsidiary, to act as agent in the sale of title insurance and perform title searches and other abstractor services;
 - (35) To invest in clearing corporations and banker's banks;
 - (36) To invest in bank premises real estate pursuant to the provisions of § 23-47-103; and
 - (37) To acquire, develop, and dispose of real estate through foreclosure or in lieu of foreclosure of debts previously contracted in the ordinary course of its banking business, including single-family lots and single-family residences consisting of one (1) through four (4) family units.
- (b) In addition to the foregoing, a state bank may exercise any other powers which are incidental to the business of banking.
- (c) In addition to the powers conferred upon state banks under this or any other law of this state, upon action of the commissioner authorizing state banks to undertake such activities, a state bank may engage in any banking activities in which state banks could engage were they acting as national banks at the time such authority is granted.
- (d)(1) If a state bank or bank holding company is located in a town with a population of fewer than two thousand five hundred (2,500) people according to the latest federal decennial census, the bank or bank holding company may acquire, purchase, or construct a dwelling for use as the residence of the bank's or bank holding company's chief executive officer as part of his or her compensation.
- (2) The expenditure for the dwelling shall not exceed one hundred thousand dollars (\$100,000).

History. Acts 1997, No. 89, § 1; 2003, No. 860, § 14. Banking Code of 1997 referred to in this section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas title.

U.S. Code. The Edge Act, referred to in this section, is codified as 12 U.S.C. § 601 et seq.

23-47-102. Acquisition and disposition of own stock.

(a) No state bank shall be the purchaser or holder of its own capital stock, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.

(b) Stock so purchased or acquired shall be sold or disposed of as expeditiously as possible within twenty-four (24) months of its purchase or acquisition. After the expiration of twenty-four (24) months, any such stock shall not be considered as part of the assets of the state bank.

(c) The provisions of this section shall not apply to the payment by a state bank of the value of shares held by shareholders dissenting from any proposed merger, consolidation, purchase or assumption, or other reorganization involving a plan of exchange of any of the stock of the state bank, who perfect their statutory rights as dissenting shareholders.

History. Acts 1997, No. 89, § 1.

23-47-103. Acquisition of bank premises.

(a) A state bank or subsidiary trust company, acting with the prior approval of the Bank Commissioner, may acquire bank premises to be used, occupied, or owned by it.

(b)(1) Any state bank acting with the prior approval of the commissioner may cause the title to its bank premises, now owned or at any time hereafter acquired by the bank to be held by a subsidiary corporation which shall be wholly owned by the bank.

(2) A state bank having such a subsidiary may rent the bank premises or any portion thereof from the subsidiary or acquire the title to the premises by purchase from the subsidiary or through its liquidation under such terms and conditions as may be approved by the commissioner.

(c) A state bank may with the prior approval of the commissioner invest in bank premises or in the stock, bonds, debentures, or other obligations of the subsidiary owning the bank premises, or make loans to, or upon the security of the stock of the subsidiary, if the aggregate of all such investments or loans, together with the amount of any indebtedness incurred by the subsidiary, will not exceed one hundred fifty percent (150%) of the capital base of the state bank.

History. Acts 1997, No. 89, § 1; 1999, No. 112, § 1.

23-47-104. Prohibition on engaging in business as real estate salespersons or brokers.

Banks, bank holding companies, and subsidiaries of banks or bank holding companies may not engage in business as real estate salespersons or brokers.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 2 — DEPOSITS

SECTION.

- 23-47-201. Notice of rules governing deposits.
- 23-47-202. Deposits by minors.
- 23-47-203. Securing of deposits.
- 23-47-204. Multiple-party deposits.
- 23-47-205. Adverse claim to deposit.
- 23-47-206. Settlement of checks at par — Exception.

SECTION.

- 23-47-207. Payment of overdrafts — Liability of officer or employee.
- 23-47-208. Deferred income investment accounts.

23-47-201. Notice of rules governing deposits.

(a)(1) Banks shall have the power to make rules governing deposits, including provisions for reasonable notice, not to exceed ninety (90) days, for the withdrawal of deposits and for changes in or amendments to those rules to be made by the bank without approval of the depositor.

(2) Notice of the rules and all changes therein shall be given to each customer whose deposits are affected by the rules, either by delivery or mailing of a copy to the customer or by posting them in a conspicuous area in the main office and in all branch offices of the bank.

(3) If the rules are stated on a signature card or other document signed by the customer, the bank shall be deemed to have given notice of the rules for purposes of this provision even if the signature card or document is returned to the bank.

(b) Rules so made shall be a valid contract between the depositor and the bank, subject to the right of the bank to change or amend the rules in the manner provided in the rules.

History. Acts 1997, No. 89, § 1.

23-47-202. Deposits by minors.

When any deposit is made in any bank by a minor, the bank may pay to the depositor the sums due him or her and the receipt or check of the minor shall be, in all respects, valid in law.

History. Acts 1997, No. 89, § 1.

23-47-203. Securing of deposits.

(a) It shall be lawful for any state bank to secure deposits made with it by any of the following:

- (1) The United States, the State of Arkansas, any county of this state, any municipality of this state, or any agency, corporate instrumentality, or political subdivision of any of the foregoing;
- (2) Any university or college supported by this state;
- (3) Any school district of this state;
- (4) Any community college district of this state;
- (5) Any relief body of the United States or of this state;
- (6) Any road, drainage, levee, bridge, street, sewer, paving, or other improvement district organized under the laws of this state;
- (7) Any regional water distribution district organized under the laws of this state;
- (8) Any federal agency;
- (9) The United States Postal Service;
- (10) Any receiver of any state or federal court, whether appointed in proceedings pending in this state or elsewhere;
- (11) Any referee in bankruptcy;
- (12) Any receiver, trustee, or operating officials appointed by any federal court in any bankruptcy, debt-adjustment, or composition proceeding pending within this state or elsewhere;
- (13) Any pension or retirement fund for employees of any county or municipality in this state or any agency, corporate instrumentality, or political subdivision of any of the foregoing; and
- (14) The Treasurer of State.

(b) It shall be lawful for any state bank to secure the deposit with it of the following described funds:

- (1) Any funds deposited into the bank and which are held in trust by the bank, awaiting investment or distribution if not prohibited by the instrument or judgment creating the trust; and
- (2) Any funds deposited for such other purposes as are approved by the Bank Commissioner.

(c)(1) A state bank may secure the deposits described in subsections (a) and (b) of this section, subject to the depositor's discretion regarding the suitability of the collateral, by:

(A) The pledge or escrow of the assets of the bank consisting of any investment in which a state bank may invest pursuant to § 23-47-401;

(B) A surety bond issued by an insurance company licensed under the laws of the State of Arkansas and either:

(i) Rated "A" or better by any one (1) or more of the following rating agencies:

- (a) A.M. Best Company, Inc.;
- (b) Standard & Poor's Insurance Rating Service;
- (c) Moody's Investors Service, Inc.; or
- (d) Duff & Phelps Credit Rating Co.; or

(ii) Listed on the then-current United States Department of the Treasury's Listing of Approved Sureties;

(C) Private deposit insurance issued by an insurance company licensed under the laws of the State of Arkansas and either:

(i) Rated "A" or better by any one (1) or more of the following rating agencies:

(a) A.M. Best Company, Inc.;

(b) Standard & Poor's Insurance Rating Service;

(c) Moody's Investors Service, Inc.; or

(d) Duff & Phelps Credit Rating Co.; or

(ii) Listed on the then-current United States Department of the Treasury's Listing of Approved Sureties; or

(D) An irrevocable standby letter of credit issued by a Federal Home Loan Bank.

(2) The aggregate market value of assets pledged or escrowed or the face amount of the surety bond, private deposit insurance, or letter of credit securing the deposit of funds by any single depositor must be equal to or exceed the amount of the deposit to be secured.

(d) Notwithstanding any other provision of this section, or the provision of any other law requiring security for deposit of funds in the form of the deposit or pledge of securities, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of the Federal Deposit Insurance Act.

(e) The powers herein conferred upon state banks are cumulative to such similar powers as they now may hold under existing laws.

History. Acts 1997, No. 89, § 1; 1999, No. 116, § 1; 2001, No. 310, § 2.

Cross References. Eligible security for deposits, § 19-8-203.

U.S. Code. The Federal Deposit Insurance Act, referred to in this section, is codified as 12 U.S.C. § 1811 et seq.

23-47-204. Multiple-party deposits.

(a) As used in this section, "multiple-party deposit account" means a deposit account established in the names of, payable to, or in a form subject to withdrawal by two (2) or more natural persons.

(b)(1) When opening a multiple-party deposit account or amending an existing deposit account so as to create a multiple-party deposit account, a bank shall utilize account documents which enable the depositor to designate ownership interest therein in terms substantially similar to one (1) or more of the following:

(A) Joint tenants with right of survivorship;

(B) Tenants in common;

(C) Tenants by the entirety;

(D) Payable on death;

(E) "Totten" or tentative trust; and

(F) Such other deposit designation as may be acceptable to the bank.

(2) Account documents which enable the depositor to indicate the depositor's intent of the ownership interest in any multiple-party deposit account may include any of the following:

- (A) The signature card;
- (B) The deposit agreement;
- (C) A certificate of deposit;
- (D) A document confirming purchase of a certificate of deposit; or
- (E) Such other document acceptable to the bank which indicates the intent of the depositor.

(3) The designation of ownership interest contained in account documents shall be conclusive evidence in any action or proceeding involving the deposit account of the intention of all depositors to vest title to the deposit account in the manner specified in the account documents.

(4) Nothing in this section shall be construed to require a bank to offer any particular type of multiple-party deposit account.

(c) Multiple-party deposit accounts which do not expressly designate ownership interest as tenants in common, payable on death, or "Totten" or tentative trust shall constitute:

(1) A joint tenant with right of survivorship deposit account, if the depositors have not indicated in the account documents that the depositors are married to each other; and

(2) A tenants by the entirety deposit account, if the depositors have indicated in the account documents that they are married to each other, whether or not they are at that time husband and wife.

(d)(1) A joint tenant with right of survivorship deposit account may be paid to or on the order of any one (1) of the depositors during his or her lifetime unless a contrary written designation, in a form acceptable to the bank, is given to the bank, or to or on the order of any one (1) of the survivors of them after the death of any one (1) or more of them.

(2) A tenants by the entirety deposit account may be paid to or on the order of either depositor during his or her lifetime, or to or on the order of the survivor after the death of one (1) of them.

(3)(A) A tenants in common deposit account may be paid, prior to the receipt by the bank of a specific written notice of death of a depositor, to or on the order of any one (1) depositor unless a contrary written designation in a form acceptable to the bank is given to the bank.

(B) Upon receipt of a specific written notice of death of a depositor in a form acceptable to the bank, the respective pro rata parts of a tenants in common deposit account may be paid to or on the order of the surviving tenant in common, and to the estate of the deceased depositor.

(C) All tenants in common deposit accounts shall be deemed to be owned pro rata by the depositors unless a contrary written designation in a form acceptable to the bank is given to the bank.

(e)(1) A payable on death deposit account is created when the depositor indicates on the account documents that on the death of the person named as holder, the deposit account shall be paid to or held by another person.

(2) Upon the death of the person named as holder, the person designated by him or her and who has survived him or her shall be the owner of the deposit account and, if more than one (1) person shall be the owners of the deposit account, ownership shall be as joint tenants with right of survivorship.

(3) During the lifetime of the depositor, he or she may change the designation of the person who is to be the owner at his or her death by written direction in a form acceptable to the bank.

(f)(1) A "Totten" or tentative trust deposit account is created when the depositor indicates on the account document that he or she is the trustee for another person and there is no written trust agreement which affects the deposit account.

(2) Upon the death of the person named as trustee, the other person shall be the owner of the deposit account and, if more than one (1) person shall be the owners of the deposit account, ownership shall be as joint tenants with right of survivorship.

(3) During the lifetime of the person named as trustee, he or she may change the classification of the person he or she is trustee for by written direction in a form acceptable to the bank.

(g) A bank shall also pay partial withdrawal requests, accept pledges of a deposit account, and otherwise deal with the deposit account in the same manner it pays the deposit account pursuant to the provisions of this section.

(h)(1) Any payment of a deposit account, acceptance of pledge of a deposit account, change in the form of a deposit account, or otherwise dealing with a deposit account by a bank in the manner provided by this section shall be a complete and valid release and discharge of the bank as to the amount paid or action taken.

(2) No bank shall have any liability whatsoever for the way in which the ownership interest of a deposit account is designated when it is opened or in which a deposit account is amended if the deposit account is opened or amended as the depositor specified in the account document.

(i) No bank making any payment in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due.

(j) The terms "written direction" and "written designation" shall not be construed to require that the depositor affix his or her signature to an instrument unless the bank requires the signature of the depositor to the instrument.

History. Acts 1997, No. 89, § 1.

CASE NOTES

Fraud and Misrepresentation.

Trial court did not err in overruling heirs' objections to an executor's accounting for a grandmother's estate because in

the absence of fraud, the executor, as the surviving joint tenant of the bank accounts on which a grandmother and her husband had included the executor as a

joint tenant with right of survivorship, owned the accounts by operation of law; the heirs failed to present sufficient evidence to warrant the imposition of a construction trust on the proceeds of the joint

accounts because there was scant evidence that the executor made a false promise to the grandmother. *Williams v. Davis*, 2009 Ark. App. 850, — S.W.3d — (2009).

23-47-205. Adverse claim to deposit.

Notice to a bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be sufficient to require the bank to pay the deposit to the adverse claimant or otherwise recognize the adverse claim unless the adverse claimant also:

(1) Procures a restraining order, injunction, or other appropriate process, which has become final and not further appealable, against the bank from a court of competent jurisdiction in a cause therein instituted by him or her wherein the person to whose credit the deposit stands is made a party and served with summons; or

(2) Executes to the bank, in form and with sureties acceptable to it, a bond indemnifying the bank from any and all liability, loss, damage, costs, and expenses for and on account of the payment of the adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

History. Acts 1997, No. 89, § 1.

23-47-206. Settlement of checks at par — Exception.

(a) No state bank shall settle any check drawn on it against an account with a sufficient balance otherwise than at par.

(b) However, the provisions of this section shall not apply with respect to the settlement of a check sent to a state bank for special handling or as a special collection item.

History. Acts 1997, No. 89, § 1.

23-47-207. Payment of overdrafts — Liability of officer or employee.

(a) Any officer or employee who knowingly pays out the funds of any state bank upon the check, order, or draft of any individual, firm, corporation, or association which does not have on deposit with the bank a sum equal to the check, order, or draft is personally liable to it for the amount so paid unless the drawer of the check, order, or draft has previously arranged with the bank for a line of credit sufficient to cover the payment or unless the payment was made pursuant to a general authorization approved by the board of directors for the officer or employee to cover the payment.

(b) However, the board of directors may ratify the overdraft and relieve the employee from liability.

History. Acts 1997, No. 89, § 1.

23-47-208. Deferred income investment accounts.

(a) On behalf of depositors, state banks may create and open deferred income investment accounts of the following types:

(1) The depositor makes a deposit of a lump sum, and the bank agrees to pay the depositor an agreed monthly or annual payment for life or for a term certain beginning immediately or at some time in the future; and

(2) The depositor makes a deposit periodically on an agreed basis, and the bank agrees to pay the depositor, on a periodic basis beginning at some time in the future for life or a term certain, an agreed monthly or annual payment.

(b) The depositor and the state bank may agree that:

(1) A partial refund of the deposit may occur upon specified events, or no refund may occur;

(2) The depositor may elect to stop payments from the bank for a term;

(3) The payments may go to designated beneficiaries in all cases both before and after death of the depositor;

(4) The amount of the payments to the bank and to the depositor will be fixed for the term agreed upon; or

(5) The payment to the depositor will be determined by an index or criteria beyond the control of the depositor or bank.

(c) The Bank Commissioner shall promulgate such rules and regulations as may be necessary and proper to carry out the intent and purpose of this section and to issue cease and desist orders to any state bank found to be violating this section or State Bank Department regulations. These department regulations shall incorporate §§ 23-81-121 — 23-81-128, where applicable.

(d) The deferred income investment accounts allowed in this section shall be exempt from §§ 23-42-501 and 23-42-502.

(e) It is the intent of this section that distributions from deferred income investment accounts be treated as nontaxable to the greatest extent possible under section 72 of the Internal Revenue Code of 1986.

History. Acts 1997, No. 89, § 1.

U.S. Code. Section 72 of the Internal

Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 72.

SUBCHAPTER 3 — AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT**SECTION.**

23-47-301. Definitions.

23-47-302. Scope of subchapter.

23-47-303. Forms.

23-47-304. Designation of agent.

23-47-305. Payment to designated agent.

SECTION.

23-47-306. Payment to minor.

23-47-307. Discharge.

23-47-308. Setoff.

23-47-309. Effect on other laws.

23-47-301. Definitions.

In this subchapter:

- (1) “Account” means a contract of deposit between a depositor and a bank, and includes a checking account, savings account, and certificate of deposit;
- (2) “Agent” means a person authorized to make account transactions for a party;
- (3) “Beneficiary” means a person named as one (1) to whom sums on deposit in an account are payable on request after the death of all parties or for whom a party is named as trustee;
- (4) “Devisee” means any person designated in a will to receive a testamentary disposition of real or personal property;
- (5) “Party” means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent;
- (6) “Payment” of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge; and
- (7) “Personal representative” includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

History. Acts 1997, No. 89, § 1.

23-47-302. Scope of subchapter.

- (a) This subchapter applies to accounts in this state.
- (b) This subchapter does not apply to:
 - (1) An account established for a partnership, joint venture, or other organization for a business purpose;
 - (2) An account controlled by one (1) or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or
 - (3) A fiduciary or trust account in which the relationship is established other than by the terms of the account.

History. Acts 1997, No. 89, § 1.

23-47-303. Forms.

A contract of deposit that substantially contains the following form establishes an agency account, and the account is governed by the provisions of this subchapter applicable to agency accounts:

“AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries. [To Add Agency Designation To Account, Name One Or More Agents].

[Select One and Initial]:

_____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

_____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES”

History. Acts 1997, No. 89, § 1.

23-47-304. Designation of agent.

(a) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent’s authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(b) Death of the sole party or last surviving party terminates the authority of an agent.

(c) An agent in an account with an agency designation has no beneficial right to sums on deposit.

History. Acts 1997, No. 89, § 1.

23-47-305. Payment to designated agent.

On request of an agent under an agency designation for an account, a bank may, unless it actually knows that the authority of agency has terminated, pay to the agent sums on deposit in the account.

History. Acts 1997, No. 89, § 1.

23-47-306. Payment to minor.

If a bank is required or permitted to make payment pursuant to this subchapter to a minor designated as a beneficiary, payment may be made pursuant to the Arkansas Uniform Transfers to Minors Act, § 9-26-201 et seq.

History. Acts 1997, No. 89, § 1.

23-47-307. Discharge.

(a)(1) Payment made pursuant to this subchapter in accordance with an agency account discharges the bank from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors.

(2) Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b)(1) Protection under this section does not extend to payments made after a bank has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the agency account should not be permitted and the bank has had a reasonable opportunity to act on it when payment is made.

(2) Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the bank is to be protected under this section.

(3) Unless a bank has been served with process in an action or proceeding, no other notice or other information shown to have been available to the bank affects its right to protection under this section.

(c) A bank that receives written notice pursuant to this section or otherwise that has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the agency account.

(d) Protection of a bank under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in agency accounts or payments made from agency accounts.

History. Acts 1997, No. 89, § 1.

23-47-308. Setoff.

(a) Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a bank, the bank has a right to setoff against the agency account.

(b) The amount of the agency account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled or, in the absence of proof of that proportion, an equal share with all parties.

History. Acts 1997, No. 89, § 1.

23-47-309. Effect on other laws.

This subchapter is supplemental to all laws pertaining to the deposit of funds in banks.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 4 — INVESTMENTS

SECTION.

23-47-401. Investment powers and limitations.

23-47-401. Investment powers and limitations.

(a) A state bank may invest its funds without limitation in the following:

- (1) Direct obligations of the United States Government;
- (2) Obligations of agencies and instrumentalities created by act of Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;
- (3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of Congress and authorized thereby to issue such a guarantee;
- (4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of Congress and authorized thereby to issue such commitments or agreements;
- (5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories, or insular possessions thereof;
- (6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;
- (7) Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year;
- (8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;
- (9) The sale of federal funds with a maturity of not more than one (1) business day;
- (10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;
- (11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that the repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian; and
- (12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, provided that the portfolio of the investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further

that the investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.

(b) A state bank may invest no more than twenty percent (20%) of its capital base in any single investment of the following types:

(1) Corporate debt obligations, including commercial paper, of any corporation that is not an affiliate or subsidiary of the bank;

(2) Revenue bond issues of any state of the United States or any municipality or any political subdivision thereof;

(3) Industrial development bonds for corporate obligors issued through any state of the United States or any political subdivision thereof;

(4) Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such an investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take the delivery of the collateral either directly or through an authorized custodian;

(5) Securities or other interests issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank; and

(6) Uninsured demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia.

(c) Subject to such additional restrictions and limitations as may be imposed by the Bank Commissioner, a state bank may invest in any other investment securities which are not described in subsection (a) or subsection (b) of this section to the extent that such investment securities are authorized for national banks.

(d) A state bank may invest in any investment not described in subsections (a) and (b) of this section as may be authorized by State Bank Department regulations.

History. Acts 1997, No. 89, § 1.

U.S. Code. The Investment Company

Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80a-1 et seq.

SUBCHAPTER 5 — LOANS

SECTION.	SECTION.
23-47-501. Loan limits — Maximum generally.	23-47-504. Loans to affiliates and insiders.
23-47-502. Loan limits — Inclusions and exceptions.	23-47-505. Illegal loans — Liability of officer or director.
23-47-503. Loans involving stock of state bank.	23-47-506. Sale of certain mortgage loans.

SECTION.

23-47-507. Power to hold and sell collateral.

23-47-508. Disposition of real estate acquired through debt collection.

SECTION.

23-47-509. Loans to minors.

23-47-510. Casualty insurance — Replacement cost coverage.

23-47-501. Loan limits — Maximum generally.

(a) The total indebtedness to any state bank of any person shall at no time exceed twenty percent (20%) of the capital base of the bank.

(b)(1) Obligations of a person as endorser or guarantor, accommodation or otherwise, of notes or other obligations shall be included in that person's loan limit.

(2)(A) However, in the case of obligations on consumer loans which are endorsed without recourse, the twenty percent (20%) limitation shall be applied to each primary debtor, but not to the liability, in such capacity, of the endorser.

(B) "Consumer loans" for the purpose of this section shall be considered to be credit extended to a natural person in which the money is to be used primarily for personal, family, or household purposes.

(c)(1) A loan or group of loans that are within the legal loan limit of a state bank at the time the loan or loans are made shall be valid for legal loan limit purposes until maturity, as stated in the original contract, regardless of fluctuations in the bank's legal loan limit. However, if a bank's legal loan limit is reduced due to fluctuations in its capital base, a loan or group of loans to a borrower or borrowers that were within the legal loan limit prior to the reduction may become in violation of the bank's reduced legal loan limit upon the extension, renewal, or advancement of additional funds on the loan or group of loans occurring after the reduction in the bank's legal loan limits.

(2) State banks are required to calculate their legal loan limits on a quarterly basis to coincide with the requirement to calculate their capital base.

(d)(1) If in any instance it shall appear, as determined by the Bank Commissioner, that the interests of a group composed of individuals, partnerships, unincorporated associations, or corporations are so inter-related that, from a credit standpoint, applying standard and customary banking practice, they should be considered as a single unit for the purposes of extensions of credit, the total indebtedness of these inter-related customers shall be combined and treated as the indebtedness of a single customer in applying the loan limit.

(2) A state bank shall not be deemed to have violated this section solely by reason of the fact that the indebtedness of a group held by the bank exceeds the limitation of this section at the time the commissioner determines that the indebtedness of the group must be combined. However, if required by the commissioner, the state bank shall dispose of indebtedness of the group in the amount of excess of the limitation of

this section within such reasonable time as shall be fixed by the commissioner.

History. Acts 1997, No. 89, § 1; 2005, No. 427, § 1.

23-47-502. Loan limits — Inclusions and exceptions.

(a) The following loans and other forms of indebtedness shall not be included in the limitation of twenty percent (20%) imposed by § 23-47-501 and may be made or acquired without being subject to any loan limit:

(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

(2) Nonconforming assets acquired as a result of acquisition of a failed bank or savings and loan association, so long as a plan for divestiture within a reasonable amount of time is approved by the Bank Commissioner;

(3) Obligations drawn in good faith against actually existing values and fully secured by goods or commodities in process of shipment may be acquired without limit;

(4) Obligations in the form of bankers' acceptances of other banks; and

(5) Obligations secured by investments which the state bank, pursuant to § 23-47-401 could invest in without limit, having a market value at all times at least equal to the principal balance of the obligation.

(b)(1) The loan limit of twenty percent (20%) provided by § 23-47-501 shall be modified so that a loan limit not to exceed sixty percent (60%) shall apply to obligations secured by transferable documents of title covering:

(A) Livestock; or

(B) Readily marketable and nonperishable commodities or staples fully insured, if of a type that is customarily insured.

(2) The property in each instance must have a value of at least one hundred fifteen percent (115%) of the amount of the secured obligation.

(3) An obligation secured in this manner shall not be deemed nonconforming on the grounds that, for the purpose of loading, unloading, storing, shipping, or transshipping, the title documents or the property covered thereby may be released under trust receipt to the possession of the obligor or borrower if, within twenty-one (21) days after the release, the property or valid title documents covering the property is redelivered to the state bank, and provided that, during the interim, the bank holds a perfected security interest in all such property under the Uniform Commercial Code, § 4-1-101 et seq.

(4) The standard twenty percent (20%) loan limit will apply even to the obligations secured by transferable documents of title if the warehouse who issued the documents of title under applicable law can transfer marketable title to the commodities described in the documents to a purchaser in the ordinary course of business.

History. Acts 1997, No. 89, § 1.

23-47-503. Loans involving stock of state bank.

(a) It shall be unlawful for any state bank to knowingly:

(1) Loan its funds to its stockholders on its own stock, or stock in its bank holding company, as collateral security;

(2) Make any loan, the proceeds of which are used to purchase its own stock or stock of its bank holding company; or

(3) Carry as an asset any loan representing, either directly or indirectly, an investment in its own stock or that of its bank holding company. Provided, however, that there shall be no violation of this subdivision (a)(3) when a bank acquires its own stock or stock in its bank holding company in the regular course of collecting a debt previously contracted in good faith if the bank complied with subdivisions (a)(1) and (2) of this section at the time the loan was made and if the bank divests the stock within two (2) years.

(b)(1) Any officer or director of any state bank or any stockholder violating the provisions of this section shall be subject to civil money penalties of one thousand dollars (\$1,000) per day, up to a maximum of one hundred thousand dollars (\$100,000) in the aggregate, for each violation.

(2) The civil penalties may be imposed by the commissioner pursuant to his or her power to and the procedure for issuing cease and desist orders.

History. Acts 1997, No. 89, § 1.

23-47-504. Loans to affiliates and insiders.

The provisions of subsections (g) and (h) of section 22 of the Federal Reserve Act, 12 U.S.C. §§ 375a and 375b, and the regulations promulgated thereunder, shall apply to any state bank.

History. Acts 1997, No. 89, § 1.

23-47-505. Illegal loans — Liability of officer or director.

Any officer or director of any state bank who shall knowingly make or approve a loan in violation of §§ 23-47-501 — 23-47-504 or who shall knowingly permit such a loan to be made, or who shall fail to exercise his or her authority to prevent the making of the loan shall be personally liable to the bank, or to the Bank Commissioner, for the full amount thereof. However, written notice of disapproval of the loan, served on the board of directors and also the commissioner at the time the making or existence of the loan first comes to his or her knowledge, shall relieve any officer or director from personal liability.

History. Acts 1997, No. 89, § 1.

23-47-506. Sale of certain mortgage loans.

Notwithstanding any other provision of law, any state bank which has as one (1) of its principal purposes the making or purchasing of loans secured by real estate mortgages is authorized to:

(1) Sell the mortgage loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or any other corporation chartered by an act of Congress for such purposes, or any successor thereof;

(2) In connection therewith, make payments of any capital contributions required pursuant to law in the nature of subscriptions for stock of the entities described in subdivision (1) of this section;

(3) Receive stock evidencing such capital contributions; and

(4) Hold or dispose of such stock.

History. Acts 1997, No. 89, § 1.

23-47-507. Power to hold and sell collateral.

(a) A state bank may hold and sell all kinds of property that may come into its possession as collateral security for loans or any ordinary collection of debts in the manner provided by law.

(b) Any personal property coming into its possession in this manner and which is not otherwise authorized for state banks to own as an asset shall be disposed of as soon as possible and after twelve (12) months from the date of acquisition shall cease to be considered as a part of its assets.

History. Acts 1997, No. 89, § 1.

23-47-508. Disposition of real estate acquired through debt collection.

(a) Except as provided in subsection (b) of this section, real estate acquired through the collection of debts previously contracted in the ordinary course of business shall not be held by the state bank as an asset for a longer period than five (5) years.

(b) The Bank Commissioner is authorized to grant an extension of the holding period not to exceed five (5) additional years, or for shorter periods as circumstances warrant, based upon his or her discretion.

(c) Real estate held pursuant to this section shall be considered an asset of the bank. The value of the asset shall be based upon fair market value supported by an appraisal or appropriate evaluation when the bank acquires ownership of the property or as established by regulation of the commissioner.

History. Acts 1997, No. 89, § 1; 2001, No. 62, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of ssembly, Regulated Industries, 24 U. Ark.
Legislation, 2001 Arkansas General As- Little Rock L. Rev. 595.

23-47-509. Loans to minors.

Whenever a minor borrows money from a bank for the purpose of defraying the expenses of his or her higher education or for necessities, any contract, promissory note, loan agreement, or other loan instrument entered into by and between the bank and the minor shall constitute a valid contract between the bank and the minor and shall be binding upon the minor with like effect as if he or she were of full age and legal capacity.

History. Acts 1997, No. 89, § 1.

23-47-510. Casualty insurance — Replacement cost coverage.

(a) A state bank, when making a mortgage loan, may not require, as a condition or term of the mortgage, that the mortgagor purchase casualty insurance on property which is the subject of the mortgage in an amount in excess of the fair market value of the buildings or appurtenances on the mortgaged premises.

(b) This section shall not be construed as limiting the right of the mortgagor to purchase replacement cost coverage on the property which is the subject of the mortgage.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 6 — SUBSIDIARIES

SECTION.	SECTION.
23-47-601. Operating subsidiaries.	23-47-606. Small business investment companies.
23-47-602. Real estate subsidiaries.	23-47-607. Investment in stock of certain banks authorized to do foreign banking.
23-47-603. Bank service companies.	23-47-608. Authority to act through subsidiaries.
23-47-604. Capital development companies.	
23-47-605. Community development corporations.	

Effective Dates. Acts 2003, No. 860, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the flow of development capital funds into and within the state has been and continues to be, insufficient to support the growth of businesses and infrastructure development; that as a result of the lack of available capital sources, the state has suffered economic losses because

of the inability to compete with other states in providing capital resources for business and infrastructure development; that this legislation will stimulate the flow of private capital and long-term loan funds that are vital to the sound financing of businesses and will encourage growth, expansion, and modernization through the reinstatement of tax credits; that unless an adequate program to encourage private capital investment is undertaken,

the state will suffer further irreparable loss as a result of the continued inability to support business and infrastructure development, and from the lost opportunities for economic expansion. Therefore, an

emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be effective on July 1, 2003.”

23-47-601. Operating subsidiaries.

(a)(1) With the prior approval of the Bank Commissioner, and subject to such conditions as may be prescribed by him or her, a state bank may engage in any activities which are a part of the business of banking or incidental thereto by means of an operating subsidiary and other activities permissible for state banks or their subsidiaries under statutory authority or as authorized by regulations of the State Banking Board.

(2) For purposes of this section, an operating subsidiary in which a state bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than fifty percent (50%) of the voting, or similar type of controlling, interest of the subsidiary; or the parent bank otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting, or similar type of controlling interest, of the subsidiary.

(3) Subsidiaries which are not subject to this section are:

(A) A subsidiary in which the state bank's investment is made and limited pursuant to specific authorization in a statute or by regulation; and

(B) A subsidiary, in which the state bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid loss in connection with a debt previously contracted.

(b) The total of each state bank's loans and investments in any single operating subsidiary and the total of each state bank's loans and investments in all subsidiaries, and bank service companies, will be considered by the commissioner and may be limited according to the commissioner's discretion, for safety and soundness purposes.

History. Acts 1997, No. 89, § 1; 1999, No. 112, § 2.

23-47-602. Real estate subsidiaries.

(a) A state bank acting through an operating subsidiary or a bank holding company acting, directly or through a subsidiary, may, with the prior approval of the Bank Commissioner, engage in real estate investment and development, including without limitation:

- (1) Development of subdivisions or additions;
- (2) Construction of improvements;

(3) Acquisition of stock or equity interests in any entity created primarily for the purpose of owning and developing real estate, including those activities authorized for community development corporations pursuant to § 23-47-605; and

(4) Any other activities necessary and proper in connection with real estate investment and development.

(b) A state bank's investment in real estate and in real estate subsidiaries, excluding its bank premises, shall not exceed one hundred fifty percent (150%) of its capital base.

(c) A state bank acting through an operating subsidiary or a bank holding company acting directly or through a subsidiary may carry out any one (1) or more of the purposes, activities, and objectives set forth in this section as principal, factor, agent, or otherwise, either alone, through, or in conjunction with any person, including the performance and carrying out of the purposes and objects herein enumerated as a member of a partnership or joint venture.

(d) Loans to an operating subsidiary engaged in real estate investment and development that are fully secured by securities that the state bank could invest in without limitation pursuant to § 23-47-401 shall not be subject to the limitations of this section.

History. Acts 1997, No. 89, § 1; 1999, No. 112, § 3.

23-47-603. Bank service companies.

(a) As used in this section, unless the context otherwise requires:

(1) "Bank service company" means a corporation or limited liability company organized for the exclusive purpose of performing bank services for one (1) or more persons, which is owned by one (1) or more state banks and one (1) or more persons; and

(2) "Bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a person; or any other activities authorized by the Bank Commissioner.

(b)(1) With the prior approval of the commissioner and subject to the conditions that may be prescribed by him or her, a state bank may establish, create, or invest in a bank service company to furnish bank services to owners of the bank service company and other persons.

(2) The total of a state bank's loans to and investments in a bank service company shall not exceed twenty percent (20%) of the bank's capital base.

(c) When a state bank becomes the sole owner of a bank service company, it shall become an operating subsidiary of the bank and be governed by § 23-47-601.

History. Acts 1997, No. 89, § 1.

23-47-604. Capital development companies.

(a)(1) State banks shall have the power to acquire and own on their own behalf stock or equity interests issued by a capital development company or make loans to a capital development company.

(2) No state bank shall invest in or lend to the capital development company more than twenty percent (20%) of the bank's capital base.

(b) Any investment in stock or equity interest made pursuant to this section shall not be revalued or classified by the Bank Commissioner solely because of the failure of a capital development company to pay dividends or distributions of equity to the investors.

History. Acts 1997, No. 89, § 1; 2003, No. 860, § 15.

23-47-605. Community development corporations.

(a) As used in this section, the term “public welfare” means developing housing, fostering economic growth and revitalization, creating small businesses, including minority-owned businesses, and supporting other community development initiatives approved by the Bank Commissioner.

(b) A state bank may make investments designed primarily to promote the public welfare, either directly or by purchasing interests in an entity primarily engaged in making the investments.

(c) A state bank shall not make any investment if the investment would expose the bank to unlimited liability.

(d) The commissioner may limit a state bank's investments in any one (1) project and a bank's aggregate investments under this section.

(e) In no case shall a state bank's aggregate investments under this section exceed ten percent (10%) of the bank's capital base.

History. Acts 1997, No. 89, § 1.

23-47-606. Small business investment companies.

(a) A state bank may purchase up to one hundred percent (100%) of the capital stock of small business investment companies and minority enterprise small business investment companies as defined by the Small Business Investment Act of 1958.

(b) However, in no event may any state bank acquire shares of any small business investment company or minority enterprise small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies or minority enterprise small business investment companies then held by the bank would exceed ten percent (10%) of the bank's capital base.

History. Acts 1997, No. 89, § 1.

U.S. Code. The Small Business Investment Act of 1958, referred to in this sec-

tion, is primarily codified as 15 U.S.C. § 661 et seq.

23-47-607. Investment in stock of certain banks authorized to do foreign banking.

(a) Any state bank may purchase up to one hundred percent (100%) of the capital stock of any corporation organized and existing under the Edge Act, and any amendments thereto.

(b) However, in no event may any state bank acquire shares of any such corporation if, upon the making of that acquisition, the aggregate amount of shares of all corporations organized and existing under the Edge Act then held by the bank would exceed ten percent (10%) of the bank's capital base.

History. Acts 1997, No. 89, § 1.

U.S. Code. The Edge Act, referred to in

this section, is codified as 12 U.S.C. § 601 et seq.

23-47-608. Authority to act through subsidiaries.

With prior notice to the Bank Commissioner and in accordance with the state and federal law, state banks are authorized to engage in activities through financial subsidiaries.

History. Acts 2001, No. 62, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

SUBCHAPTER 7 — TRUST POWERS

SECTION.

- 23-47-701. Authority of Bank Commissioner.
- 23-47-702. Considerations determinative of grant or denial of applications.
- 23-47-703. Grant and exercise of powers deemed not in contravention of Arkansas law.
- 23-47-704. Segregation of fiduciary and general assets — Separate books and records.
- 23-47-705. Prohibited operations — Separate investment account — Collateral for certain funds used in conduct

SECTION.

- of business — Lien and claim upon state bank failure.
- 23-47-706. Official's oath or affidavit.
- 23-47-707. Loans of trust funds to officers and employees prohibited — Penalties.
- 23-47-708. Surrender of authorization — Board resolution — Commissioner certification — Activities affected.
- 23-47-709. Revocation — Procedures available.
- 23-47-710. Services provided by affiliates.

23-47-701. Authority of Bank Commissioner.

The Bank Commissioner shall be authorized and empowered to grant to state banks applying therefor the right to operate a trust department to act as trustee, executor, administrator, custodian, registrar, paying agent or transfer agent of stocks and bonds, guardian of estates, assignee, or receiver or to act in any other fiduciary capacity in which

national banks, subsidiary trust companies, national trust companies, or other corporations which come into competition with state banks are permitted to act.

History. Acts 1997, No. 89, § 1.

23-47-702. Considerations determinative of grant or denial of applications.

In determining whether to grant an application by a state bank for permission to operate a trust department to exercise the powers enumerated in this subchapter, the Bank Commissioner may take into consideration the sufficiency of the capital base of the applying state bank, the needs of the community to be served, and any other facts and circumstances that seem to him or her proper, and may grant or refuse the application accordingly.

History. Acts 1997, No. 89, § 1.

23-47-703. Grant and exercise of powers deemed not in contravention of Arkansas law.

The granting and exercise of such powers as are authorized by this subchapter shall not be deemed to be in contravention of any other provision of Arkansas law.

History. Acts 1997, No. 89, § 1.

23-47-704. Segregation of fiduciary and general assets — Separate books and records.

State banks exercising any or all of the powers enumerated in this subchapter shall segregate all assets held in its trust department from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this subchapter.

History. Acts 1997, No. 89, § 1.

23-47-705. Prohibited operations — Separate investment account — Collateral for certain funds used in conduct of business — Lien and claim upon state bank failure.

(a)(1) No state bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes.

(2) Funds deposited or held in trust by the state bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall secure the

funds deposited or held in trust with investments in which a state bank may invest without limitation pursuant to § 23-47-401.

(3) No security shall be required to the extent the funds so deposited or held in trust are insured under the provisions of the Federal Deposit Insurance Act.

(b) In the event of the failure of the state bank, the owners of the funds held in trust for investment shall have a first priority lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

History. Acts 1997, No. 89, § 1.

section, is codified as 12 U.S.C. § 1811 et seq.

U.S. Code. The Federal Deposit Insurance Corporation Act, referred to in this

23-47-706. Official's oath or affidavit.

In any case in which Arkansas law requires that a corporation acting as trustee, executor, administrator, or in any capacity specified in this subchapter shall take an oath or make an affidavit, the president, a vice president, or a trust officer of a state bank may take the necessary oath or execute the necessary affidavit.

History. Acts 1997, No. 89, § 1.

23-47-707. Loans of trust funds to officers and employees prohibited — Penalties.

(a) It shall be unlawful for any state bank to lend to any officer, director, or employee any funds held in trust under the powers conferred by this subchapter, or to sell assets held in trust to any such persons, without the prior written approval of the Bank Commissioner.

(b) In the absence of the prior written approval of the commissioner, any officer, director, or employee making the loan or sale, or to whom the loan or sale is made is guilty of a Class D felony.

History. Acts 1997, No. 89, § 1.

23-47-708. Surrender of authorization — Board resolution — Commissioner certification — Activities affected.

(a)(1) Any state bank desiring to surrender its right to operate a trust department and to exercise the powers granted under this subchapter, in order to relieve itself of the necessity of complying with the requirements of this subchapter, or to have returned to it any securities which it may have deposited with the state and local authorities for the protection of private or court trusts, or for any other purpose, may file with the Bank Commissioner a certified copy of a resolution of its board of directors signifying the desire.

(2) Upon receipt of the resolution, the commissioner, after satisfying himself or herself that the bank has been relieved in accordance with Arkansas law of all duties as trustee, executor, administrator, custo-

dian, registrar, paying agent or transfer agent of stocks or bonds, guardian of estates, assignee, receiver, or other fiduciary, under court, private, or other appointments previously accepted under authority of this subchapter may, in his or her discretion, issue to the bank a certificate certifying that the bank is no longer authorized to operate a trust department and exercise the powers granted by this subchapter.

(b) Upon the issuance of a certificate by the commissioner certifying that a state bank is no longer authorized to operate a trust department, the bank:

(1) Shall no longer operate a trust department or be subject to the provisions of this subchapter or State Bank Department regulations made pursuant thereto;

(2) Shall be entitled to have returned to it any securities which it may have deposited with state or local authorities for the protection of private or court trusts; and

(3) Shall not operate a trust department or exercise thereafter any of the powers granted by this subchapter without first applying for and obtaining a new permit to operate a trust department to exercise such powers pursuant to the provisions of this subchapter.

History. Acts 1997, No. 89, § 1.

23-47-709. Revocation — Procedures available.

(a)(1) In addition to the authority conferred by any other law, if, in the opinion of the Bank Commissioner, a state bank is unlawfully or unsoundly operating a trust department or exercising, or has unlawfully or unsoundly operated or exercised, or has failed for a period of five (5) consecutive years to operate a trust department or exercise the powers granted by this subchapter, or otherwise fails or has failed to comply with the requirements of this subchapter, the commissioner may issue and serve upon the bank a notice of intent to revoke the authority of the bank to operate its trust department and exercise the powers granted by this subchapter.

(2) The notice shall contain a statement of the facts constituting the alleged unlawful or unsound operation or exercise of powers, or failure to operate or exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking the authority to exercise the powers should issue against the bank.

(b) The hearing shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after service of the notice unless an earlier or later date is set by the commissioner at the request of any state bank so served.

(c)(1) Unless the state bank so served shall appear at the hearing by an authorized representative, it shall be deemed to have consented to the issuance of the revocation order.

(2) In the event of consent, or if upon the record made at the hearing, the commissioner shall find that any allegation specified in the notice of charges has been established, the commissioner may issue and serve upon the state bank an order prohibiting it from accepting any new or additional trust accounts and revoking authority to operate its trust department and exercise any and all powers granted by this subchapter, except that the order shall permit the bank to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(d) A revocation order shall become effective not earlier than the expiration of thirty (30) days after service of the order upon the state bank so served, except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein, and shall remain effective and enforceable, except to the extent that it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History. Acts 1997, No. 89, § 1.

23-47-710. Services provided by affiliates.

(a) Any bank, subsidiary trust company, or national trust company qualified to act as a fiduciary in this state is hereby specifically authorized to utilize its respective affiliates to provide services for any trust or estate for which the bank, subsidiary trust company, or national trust company acts as a trustee or other fiduciary, provided the bank, subsidiary trust company, or national trust company believes, in the exercise of the standard of care described in § 28-71-105, that the services are reasonably necessary and that its affiliate can render the services, including, but not limited to, securities brokerage services, computer services, and banking services to the trust or estate as competently as similar services rendered by nonaffiliates and for compensation equal to or less than that charged by nonaffiliates.

(b) Provided the foregoing requirements are met, an affiliate may be utilized by the bank, subsidiary trust company, or national trust company without the approval or consent of any person or specific authorization in the trust instrument, unless the power is expressly withheld in the trust instrument.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 6.

SUBCHAPTER 8 — SUBSIDIARY TRUST COMPANIES

SECTION.	SECTION.
23-47-801. Definitions.	trust company for affiliated bank.
23-47-802. Subsidiary trust companies — Creation, formation, etc. — Powers — Location.	23-47-804. Removal of accounts from operation of substitution agreement — Denial of substitution.
23-47-803. Substitution of subsidiary trust company or national	

SECTION.

23-47-805. Deposits.

23-47-806. Responsibility for acts and omissions.

SECTION.

23-47-807. Qualification as successor fiduciary.

Effective Dates. Acts 1997, No. 408, § 24: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 become effective on June 1, 1997 and that this act should become effective prior to the effective date of those

certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

23-47-801. Definitions.

For purposes of this subchapter, "affiliated bank" means a bank, having authority to conduct trust business and business incidental to trust business within this state, more than fifty percent (50%) of the voting stock of which is owned directly or indirectly by:

(1) The same bank holding company that owns, directly or indirectly, more than fifty percent (50%) of the voting stock of a subsidiary trust company or national trust company; or

(2) The same five (5) or fewer persons who are individuals, estates, or trusts that own directly or indirectly more than fifty percent (50%) of the voting stock of the bank holding company described in subdivision (1) of this section, taking into account the stock ownership of each such person only to the extent the ownership is identical with respect to each of the bank and the bank holding company.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 7.

23-47-802. Subsidiary trust companies — Creation, formation, etc. — Powers — Location.

(a) Notwithstanding the provisions of § 23-48-405, bank holding companies that own, directly or indirectly, an affiliated bank are authorized and empowered by the provisions of this subchapter to apply to the Bank Commissioner for authority to:

(1) Create, form, and establish subsidiary trust companies under this subchapter for the purpose of combining the trust operations of their affiliated banks into a single trust operation; and

(2) Create, form, and establish national trust companies under the laws of the United States.

(b) In determining whether to grant an application for permission to establish a subsidiary trust company, the commissioner shall take into

consideration the sufficiency of the capital base of the applying bank holding company, the needs of the communities to be served, and any other facts and circumstances that seem to him or her proper, and may grant or refuse the application accordingly.

(c) The subsidiary trust company shall be formed as a business corporation under the Arkansas Business Corporation Act, § 4-27-101 et seq. The newly formed subsidiary trust company shall only have the ability to conduct trust business that could be conducted by the individual trust departments combined from the affiliated banks to create the subsidiary trust company.

(d) Offices of a subsidiary trust company may be located only in:

(1) Communities where its affiliated banks are located or in communities where their branches are or could be located; or

(2) Communities where it would be authorized to have an office if it were a national trust company.

(e) A subsidiary trust company shall be fully subject to the provisions of § 23-50-101 et seq.

History. Acts 1997, No. 89, § 1.

23-47-803. Substitution of subsidiary trust company or national trust company for affiliated bank.

(a) A subsidiary trust company or national trust company and one (1) or more of its affiliated banks may enter into one (1) or more agreements under which the subsidiary trust company or national trust company is substituted as fiduciary for each affiliated bank in each fiduciary account listed in the agreement. The agreement shall be filed with the Bank Commissioner before the effective date of the substitution and must include:

(1) A list of each fiduciary account for which substitution is requested; and

(2) The effective date of the substitution, which may not be less than ninety (90) days after the date of the agreement.

(b) Not later than ninety (90) days before the effective date of a substitution under this section, the parties to the substitution agreement shall send written notice of the substitution to the following:

(1) Each person who is readily ascertainable as a beneficiary of the account because of the receipt of statements of account by the person, or in the case of a minor beneficiary, by a parent, conservator, or guardian of the minor beneficiary;

(2) Each cofiduciary;

(3) Each surviving settlor of a trust;

(4) Each issuer of a security for which the affiliated bank administers a fiduciary account;

(5) The plan sponsor of each employee benefit plan;

(6) The principal of each agency account; and

(7) The guardian of the person of each ward under guardianship.

(c)(1) The notice must be sent by United States mail to the person's current address as shown on the fiduciary records.

(2) If the fiduciary has no address for the person on its records, the fiduciary shall make a reasonable attempt to ascertain the person's current address.

(3) The notice must disclose the person's rights with respect to objecting to the transfer of the fiduciary account and the liability of the existing fiduciary and the substitute fiduciary for their actions.

(4) Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice does not impair the validity or effect of substitution.

(5) If a substitution of a subsidiary trust company is ineffective because of a defect in the required notice, the actions taken by the subsidiary trust company before the determination of the invalidity of the substitution are valid if the actions would have been valid if performed by the affiliated bank.

(d)(1) Except as provided by this subsection, the prospective designation in a will or other instrument of the affiliated bank as fiduciary is considered designation of the subsidiary trust company or national trust company, and any grant in the will or other instrument of any discretionary power is considered conferred on the subsidiary trust company or national trust company.

(2) However, the affiliated bank and subsidiary trust company or national trust company may agree in writing to have the designation of the affiliated bank as fiduciary be binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this subchapter.

(e) Substitution under this section is effective for all purposes on the effective date stated in the agreement between the subsidiary trust company or national trust company and the affiliated bank, unless, not later than fifteen (15) days before the effective date, a party entitled to notice of the substitution under subsection (b) of this section files a written petition in a court of competent jurisdiction seeking to have the substitution denied under § 23-47-804 and provides the affiliated bank with a copy of the filed petition.

(f) If a petition is filed and notice is given under subsection (e) of this section, the substitution takes effect when the petition is withdrawn or dismissed or when the court enters a final order denying the relief sought.

(g)(1) On the effective date, the subsidiary trust company or national trust company succeeds to all right, title, and interest in all property that the affiliated bank holds as fiduciary, except property held for accounts for which there has been no substitution under this subchapter, without the necessity of any instrument of transfer or conveyance, and the subsidiary trust company or national trust company shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and

obligations and exercise all the powers and authority connected with or incidental to that fiduciary capacity in the same manner as if the subsidiary trust company or national trust company had been originally named or designated fiduciary.

(2) However, the affiliated bank is responsible and liable for all actions taken by it while it acted as fiduciary.

History. Acts 1997, No. 89, § 1.

23-47-804. Removal of accounts from operation of substitution agreement — Denial of substitution.

(a) A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the Bank Commissioner before the effective date stated in the agreement.

(b) The substitution of a subsidiary trust company or national trust company as fiduciary of an account may be denied if the court having jurisdiction, on notice and hearing, determines that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account.

(c) Subsection (b) of this section is cumulative to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary under Arkansas law or in the instrument creating the fiduciary relationship.

(d) In any proceeding under this section, the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

History. Acts 1997, No. 89, § 1.

23-47-805. Deposits.

(a) A subsidiary trust company or national trust company may deposit with an affiliated bank fiduciary funds that are being held pending investment, distribution, or payment of debts.

(b) A subsidiary trust company or national trust company may deposit with an affiliated bank fiduciary funds as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust.

History. Acts 1997, No. 89, § 1.

23-47-806. Responsibility for acts and omissions.

(a) The bank holding company owning a subsidiary trust company or national trust company shall file with the Bank Commissioner an irrevocable undertaking to be fully responsible for the existing and future fiduciary acts and omissions of its subsidiary trust company or national trust company.

(b) If an affiliated bank has given bond to secure performance of its duties and the subsidiary trust company or national trust company qualifies as successor fiduciary, the subsidiary trust company or national trust company shall give bond to secure performance of its duties in the same manner.

History. Acts 1997, No. 89, § 1.

23-47-807. Qualification as successor fiduciary.

For the purposes of qualification as successor fiduciary under any requirements contained in any document creating a fiduciary account or any statute of this state relating to fiduciary accounts, the subsidiary trust company or national trust company:

(1) Is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank holding company; and

(2) Shall be treated as a national bank, unless:

(A) It is not a national bank under federal law relating to national banks; and

(B) It has not entered into a substitution agreement with an affiliated bank that is a national bank under federal law relating to national banks.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 9 — SAFE-DEPOSIT FACILITIES

SECTION.

- 23-47-901. Safe deposit facilities — Liability of lessor.
- 23-47-902. Multiple-party leases.
- 23-47-903. Lease to a minor.
- 23-47-904. Limiting right of access for failure to comply with security procedures.

SECTION.

- 23-47-905. Adverse claims to contents of safe-deposit box.
- 23-47-906. Remedies and procedures for nonpayment of rent.

Effective Dates. Acts 1997, No. 408, § 24: May 31, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 become effective on June 1, 1997 and that this act should become effective prior to the effective date of those

certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997.”

23-47-901. Safe deposit facilities — Liability of lessor.

(a) A bank may lease safe-deposit boxes for the keeping of property on terms as may be agreed to by the parties.

(b) No bank shall be liable for any loss of the property in a safe-deposit box by theft, robbery, fire, or other cause.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 8.

23-47-902. Multiple-party leases.

(a) If a safe-deposit box is held in the name of two (2) or more persons, any one (1) of such persons shall be entitled to access the safe-deposit box and shall be permitted to remove the contents thereof, and the bank shall not be responsible for any damage arising by reason of such access or removal by one (1) of the persons.

(b) The death of one (1) holder of a safe-deposit box held in the name of two (2) or more persons does not affect the right of any other holder of the safe-deposit box to have access to and to remove contents from the safe-deposit box.

History. Acts 1997, No. 89, § 1.

23-47-903. Lease to a minor.

A bank may lease a safe-deposit box to a minor and in connection therewith, deal with him or her to the same effect as if leasing to and dealing with a person of full legal capacity.

History. Acts 1997, No. 89, § 1.

23-47-904. Limiting right of access for failure to comply with security procedures.

If any lessee is unwilling or unable to comply with any of the bank's normal requirements or procedures in connection with access to a safe-deposit box relating to security, safety, or protection, the bank has the right to limit or deny access to the safe-deposit box by that lessee unless all lessees of the safe-deposit box take such action as is necessary to ensure reasonable compliance with the security, safety, or protection requirements or procedures.

History. Acts 1997, No. 89, § 1.

23-47-905. Adverse claims to contents of safe-deposit box.

Notice to a bank of an adverse claim to the contents of a safe-deposit box shall not be sufficient to require the bank to deny access to its lessee unless the adverse claimant also procures a restraining order, injunction, or other process, which has become final and not further appeal-

able, issued in an action by a court of competent jurisdiction in which the lessee is served with process and named as a party.

History. Acts 1997, No. 89, § 1.

23-47-906. Remedies and procedures for nonpayment of rent.

(a) If the safe-deposit box rental is delinquent for six (6) months, the bank, after at least thirty (30) days’ notice by certified mail, return receipt requested, addressed to the lessee at the lessee’s last known address on the books of the bank, may, if the rent is not paid within the time specified in the notice, open the safe-deposit box in the presence of a notary public and two (2) employees, at least one (1) of whom is an officer of the bank.

(b) The bank shall inventory the contents of the safe-deposit box in detail and place the contents of the safe-deposit box in a sealed envelope or container bearing the name of the lessee.

(c)(1) The bank shall hold the contents of the safe-deposit box subject to a lien for its rental, the cost of opening the safe-deposit box, and the damages in connection therewith.

(2) If the rental, cost, damages, and any other lawful charges for the use of the safe-deposit box or the holding of the contents thereof are not paid within two (2) years from the date of opening of the safe-deposit box, the bank may sell at that time or at any time prior to seven (7) years from the date the safe-deposit box lease expired any part or all of the contents at public auction in like manner and upon like notice as is prescribed for the sale of real property under mortgage or deed of trust.

(3) Any unauctioned contents of safe-deposit boxes and any excess proceeds from the sale shall be remitted to the Auditor of State under the procedures prescribed by § 18-28-201 et seq.

History. Acts 1997, No. 89, § 1.

A.C.R.C. Notes. The former Uniform Disposition of Unclaimed Property Act, referred to in this section, was repealed, with the exception of what will be current

§ 18-28-230, and replaced by the enactment of the Unclaimed Property Act by Acts 1999, No. 850. The Unclaimed Property Act is now codified as § 18-28-201 et seq.

CHAPTER 48
ORGANIZATION AND OPERATION

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. RESERVES AND DIVIDENDS.
- 3. ORGANIZATION AND MANAGEMENT GENERALLY.
- 4. BANK HOLDING COMPANIES.
- 5. MERGERS, CONSOLIDATIONS, CONVERSIONS, EMERGENCY ACQUISITIONS, PURCHASES, OR ASSUMPTIONS.
- 6. REORGANIZATION THROUGH PLAN OF EXCHANGE.
- 7. BRANCH OFFICES.
- 8. CUSTOMER-BANK COMMUNICATION TERMINALS.
- 9. INTERSTATE BANK MERGERS AND BRANCHING.

SUBCHAPTER

10. REGISTRATION OF OUT-OF-STATE BANKS.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on June 1, 1997 and that this act should become effective prior to the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

Acts 1997, No. 408, § 24: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 become effective on June 1, 1997 and that this act should become effective prior to the effective date of those certain provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 23-48-101. Banks subject to gross receipts and compensating use taxes.
- 23-48-102. Trust companies no longer subject to banking laws.
- 23-48-103. Bank holidays.

SECTION.

- 23-48-104. Dealings with agents, fiduciaries, etc.
- 23-48-105. Agents for affiliate.
- 23-48-106. Exemption from posting bond in certain transactions.

23-48-101. Banks subject to gross receipts and compensating use taxes.

All banks shall be subject to the Arkansas Gross Receipts Act, § 26-52-101 et seq., and the Arkansas Compensating Tax Act, § 26-53-101 et seq.

History. Acts 1997, No. 89, § 1.

23-48-102. Trust companies no longer subject to banking laws.

(a) All trust companies, other than national trust companies and subsidiary trust companies, in existence on May 30, 1997, must cease operations as a trust company.

(b) Trust companies, other than subsidiary trust companies and national trust companies, which have not become banks by May 31, 1997, by complying with the provisions of law for the formation of a bank, shall no longer act as or be authorized to act as a fiduciary, nor shall they be subject to laws governing banks or trust companies, or exercise or be authorized to exercise any powers granted banks or trust companies by those laws, but instead will automatically become busi-

ness corporations and be subject to the Arkansas Business Corporation Act, § 4-27-101 et seq., and the Bank Commissioner shall deliver certified copies of the articles of incorporation, all amendments thereto, and all other corporate filings of those trust companies to the Secretary of State for inclusion in his or her official records of filings of business corporations.

History. Acts 1997, No. 89, § 1.

23-48-103. Bank holidays.

(a)(1) Any bank, subsidiary trust company, or national trust company doing business in this state may close its office for the transaction of business upon any day which has been or may hereafter be set apart or designated under the laws of this state or of the United States as a legal holiday.

(2) All acts omitted or done by any bank, subsidiary trust company, or national trust company upon any such day shall have the same consequence and effect as if omitted or done upon the next succeeding business day.

(b)(1) Any bank, subsidiary trust company, or national trust company transacting business in the State of Arkansas may close on any one (1) business day of each week.

(2) Any day upon which a bank, subsidiary trust company, or national trust company may elect to close shall, with respect to the institution, be deemed a holiday for all purposes and not a business day.

(3) All acts omitted or done by a bank, subsidiary trust company, or national trust company upon any such day shall have the same consequence and effect as if omitted or done upon the next succeeding business day.

(c) Any act authorized, required, or permitted to be performed at or with respect to any such bank, subsidiary trust company, or national trust company on the days closed may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from the delay.

History. Acts 1997, No. 89, § 1.

23-48-104. Dealings with agents, fiduciaries, etc.

A bank dealing, whether to its own benefit or otherwise, with, through, or under any person who is or may be an officer, employee, member, agent, trustee, representative, or other fiduciary of another person shall not be deemed to have notice of nor be obligated to inquire as to any lack of or limitation upon the power of the person solely by reason either of:

(1) The fact that the person has executed in his or her representative capacity and is himself or herself the payee or endorsee of any check, bill, note, or other promise or order; or

(2) The use of descriptive words in connection with his or her deposit account or accounts, any transfer, certificate, or memorandum thereof, or in connection with any signature or endorsement of the person.

History. Acts 1997, No. 89, § 1.

23-48-105. Agents for affiliate.

(a)(1) As used in this section, “institution” means a bank, savings and loan association, or savings bank organized under the laws of any state or the United States.

(2) For the purpose of determining what constitutes an affiliated institution in this section, “control”, as it pertains to the definition of “affiliate”, has the meaning set forth in § 2(a)(2) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1841.

(b) Any state bank may, upon compliance with the requirements of this section, agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, perform such other services as may receive the prior approval of the Bank Commissioner, and act as an agent for any affiliated institution.

(c) A state bank that proposes to enter into an agency agreement under this section shall, prior to entering into such an agreement, file with the commissioner:

(1) A notice of intention to enter into an agency agreement with an affiliated institution;

(2) A description of the services proposed to be performed under the agency agreement; and

(3) A copy of the agency agreement.

(d)(1) If any proposed service is not specifically designated in subsection (b) of this section, and has not previously been approved in a State Bank Department regulation, the commissioner shall decide whether to approve the offering of the service after receipt of the notice required in subsection (c) of this section.

(2) In deciding whether to approve any proposed service that is not specifically designated in subsection (b) of this section, the commissioner shall consider whether the service would be consistent with applicable federal and state law and the safety and soundness of the principal and agent institutions.

(e) A state bank may not under an agency agreement:

(1) Conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) Have an agent conduct any activity that the state bank, as principal, would be prohibited from conducting under applicable state or federal law.

(f) The commissioner may order a state bank or any other institution subject to the commissioner’s enforcement powers to cease acting as an agent or principal under any agency agreement that the commissioner finds to be inconsistent with safe and sound banking practices.

(g) Notwithstanding any other provision of the law of this state, a state bank acting as an agent for an affiliated institution in accordance

with this section shall not be considered to be a branch of that institution.

History. Acts 1997, No. 89, § 1.

23-48-106. Exemption from posting bond in certain transactions.

(a) Except when the dollar amount of responsibility assumed exceeds its capital base, no bank chartered or licensed to do business in this state shall be required to furnish fidelity, surety, or performance bond, in business transactions involving:

- (1) Garnishment;
- (2) Replevin;
- (3) Foreclosure; or
- (4) Forcible entry and detainer.

(b) At the beginning of any proceeding in all such business transactions, the bank shall, upon request, furnish to each party to the transaction a copy of its most recent statement of financial condition.

(c) Nothing in this section shall be construed to:

- (1) Prevent a bank from electing or agreeing to furnish bond at its own cost;
- (2) Prevent any other party of interest desiring protection in a business transaction with a bank from electing to secure and pay for a bond covering the bank to the benefit of the party to the transaction; or
- (3) Amend or repeal any law pertaining to:
 - (A) Corporate surety or indemnity bonds covering directors, officers, or employees of the bank;
 - (B) Foreign corporations, associations, or persons not authorized to do business in this state;
 - (C) Actions available against the bank for injury or damage; or
 - (D) Bonding requirements involving fiduciary activities.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 2 — RESERVES AND DIVIDENDS

SECTION.
23-48-201. Membership in Federal Reserve System.

SECTION.
23-48-202. Reserve requirements.
23-48-203. Payment of dividends.

23-48-201. Membership in Federal Reserve System.

Any state bank shall have the right to own such amount of stock in a federal reserve bank as may be required for it to become a member of the Federal Reserve System.

History. Acts 1997, No. 89, § 1.

23-48-202. Reserve requirements.

A state bank not a member of the Federal Reserve System shall maintain at all times a reserve fund as required by the Federal Reserve Board, unless otherwise provided by State Bank Department regulations.

History. Acts 1997, No. 89, § 1.

23-48-203. Payment of dividends.

Any state bank may, from time to time, declare and pay dividends in accordance with State Bank Department regulations.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 3 — ORGANIZATION AND MANAGEMENT GENERALLY**SECTION.**

- 23-48-301. Application for incorporation.
- 23-48-302. Organizational expenses.
- 23-48-303. Promoter's fees prohibited.
- 23-48-304. Investigation of new charter applications by Bank Commissioner.
- 23-48-305. Issuance and filing of certificate of incorporation.
- 23-48-306. Relocation of place of business — Amendment of articles.
- 23-48-307. Objects and method of charter amendment.
- 23-48-308. Filing of amendments to articles of incorporation.
- 23-48-309. Names of state banks and subsidiary trust companies.
- 23-48-310. Minimum capital requirements generally.
- 23-48-311. Increase or decrease of capital stock.
- 23-48-312. Liability of shareholders — Assessment of stock.
- 23-48-313. Classes of stock — Fractional shares — Scrip.
- 23-48-314. Preemptive rights of stockholders.

SECTION.

- 23-48-315. Issuance and sale of capital notes.
- 23-48-316. Transfer of stock.
- 23-48-317. Change in control.
- 23-48-318. Stockholder meetings — Notice of special meeting.
- 23-48-319. Stockholder meetings — Notice of annual meeting.
- 23-48-320. Stockholder meetings — Quorum — Voting.
- 23-48-321. Closing transfer books — Fixing record date.
- 23-48-322. Board of directors — Standard of conduct.
- 23-48-323. Officers — Selection — Terms — Bonds.
- 23-48-324. Officers — Taking acknowledgments.
- 23-48-325. Banker's banks.
- 23-48-326. Application of Arkansas Business Corporation Act.
- 23-48-327. Registered office and registered agent for service of process.

23-48-301. Application for incorporation.

(a) Any one (1) or more natural persons, eighteen (18) years old or older, a majority of whom shall be bona fide residents of this state, who may desire to associate themselves by articles of incorporation for the purpose of establishing any state bank, may apply to the Bank Commissioner to be incorporated.

(b) An application for authority to organize a state bank shall be submitted to the commissioner in the form that the commissioner may

prescribe and shall include the information set forth in subsections (b) and (c) of this section, and contain additional information which the commissioner may require. Five (5) copies of the proposed articles of incorporation and proposed bylaws shall be filed with the application. The application and articles of incorporation shall be signed by each of the incorporators, and shall be accompanied by a filing fee of not more than fifteen thousand dollars (\$15,000) as set by State Bank Department regulations, which shall not be refundable.

(1) The name, citizenship, residence, and occupation of each incorporator, and of each of the initial directors, and the name and address of each stock subscriber, and the amount of stock paid for by each;

(2) The name and address of an individual within the state to whom notice to all incorporators may be sent;

(3) The total initial capital and the number of shares of each class of the capital stock to be authorized;

(4) The corporate name;

(5) The proposed location of the main banking office;

(6) If known, the name and residence of the proposed president, chief executive officer, operations officer, and, if applicable, the name and address of the proposed trust officer;

(7) The names of the natural persons who propose to own or control more than five percent (5%) of the capital stock;

(8) The past and present connection with any depository institution, financial institution, or national trust company, other than as a customer on terms generally available to the public, of each proposed director and each subscriber to more than five percent (5%) of the capital stock;

(9) Evidence of the character, financial responsibility, and ability of the incorporators and proposed directors;

(10) A brief statement of the purposes for which the state bank is incorporated, and whether it shall operate a trust department;

(11) The term for which the state bank is to exist, which shall be perpetual unless otherwise limited;

(12) A statement signed and verified by the incorporators that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the commissioner and that the requirements of § 23-48-310 have been met;

(13) Proof that application for federal deposit insurance has been made; and

(14) Recitation of the need for and advisability of the approval to organize.

(c) The proposed articles of incorporation shall contain the following:

(1) The name of the proposed institution;

(2) The town or city in which the proposed institution is to be located;

(3) The amount of capital stock authorized, the number of shares of each class, the relative preferences, powers, and rights of each class, and the amount of paid-in surplus;

(4) The names and places of residence of the stockholders and the number of shares held by each;

(5) A statement whether voting for directors shall or shall not be cumulative and the extent, if any, of the preemptive rights of stockholders;

(6) The term of the proposed institution's existence, which shall be perpetual unless otherwise limited;

(7) The names of the initial board of directors composed of no fewer than three (3) natural persons who shall serve until the next annual meeting or until their successors are regularly elected and qualified;

(8) Other information that the State Bank Department may require; and

(9) Other proper provisions that the incorporators may choose to insert for the regulation of the internal affairs and business of the state bank.

(d) All persons purporting to act as or on behalf of a state bank knowing there was no incorporation under this chapter are jointly and severally liable for all liabilities created while so acting.

History. Acts 1997, No. 89, § 1.

23-48-302. Organizational expenses.

(a) Organizational expenses shall not be paid from capital or surplus funds of the state bank without the prior written consent of the Bank Commissioner.

(b)(1) Prior to applying for a charter, the incorporators shall establish an organizational expense fund in an amount the commissioner deems adequate.

(2) The fund shall be used for expenses incurred by the incorporators in connection with the organization of the proposed state bank.

History. Acts 1997, No. 89, § 1.

23-48-303. Promoter's fees prohibited.

(a) A state bank shall not pay any fee, compensation, or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions, selling shares, or other services in connection with its organization or for securing subscriptions for stock, except legal fees and other usual and ordinary expenses necessary for its organization.

(b) A majority of incorporators shall file with the State Bank Department, at the time of filing of the articles, an affidavit:

(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the state bank, subscription for its shares, and sale of its shares; and

(2) Stating that no fee, compensation, or commission prohibited by this section has been paid or incurred.

(c) In the event of a violation of this section, the Bank Commissioner may disapprove the articles on account of the violation.

History. Acts 1997, No. 89, § 1.

23-48-304. Investigation of new charter applications by Bank Commissioner.

(a) As soon as practicable after acceptance of any application for a new state bank charter and receipt of the filing fee, the Bank Commissioner shall ascertain, from the best sources of information at his or her command, the character and general fitness of the persons named as stockholders of more than five percent (5%) of the issued stock and their standing in the community in which the proposed institution is to be located.

(b) The investigation shall seek to determine the probable support for the new state bank and the adequacy of existing facilities and services in the community.

(c) The investigation shall address:

- (1) The proposed institution's earnings and deposits prospects;
- (2) The ability and character of its proposed management;
- (3) The adequacy of initial capital;
- (4) The safety and soundness of intended operations;
- (5) The economic conditions in the market to be served;
- (6) The convenience and needs of the community to be served; and
- (7) Whether or not its proposed corporate powers are consistent with applicable banking law.

(d) The commissioner shall also determine to his or her satisfaction that:

(1) The persons named as stockholders of more than five percent (5%) of the issued stock, incorporators, and directors have the confidence of the community and are able, financially and otherwise, to discharge the obligations resting upon them under any of the provisions of this chapter;

(2) The requisite capital has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the commissioner and that the requirements of § 23-48-310 have been met;

(3) A majority of the stockholders are residents of this state; and

(4) There exists an economic need for the business in the community.

History. Acts 1997, No. 89, § 1.

23-48-305. Issuance and filing of certificate of incorporation.

(a) Upon approval of the State Banking Board and payment of the fees, the Bank Commissioner shall give to the persons named as incorporators a certificate of incorporation, in the form that he or she may prescribe, if the commissioner has made satisfactory determinations as to the matters described in § 23-48-304(d)(1)-(4) and is also satisfied that appropriate federal deposit insurance has been obtained.

(b) The commissioner shall also return one (1) of the copies submitted to him or her of the articles of incorporation upon which he or she

has endorsed the fact of the issuance by him or her of the certificate of incorporation.

(c) Upon receipt of the certificate of incorporation, the institution may proceed with its business.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 5.

23-48-306. Relocation of place of business — Amendment of articles.

(a)(1) Any state bank may apply for authority to change its place of business from one (1) municipality to another by filing with the Bank Commissioner, as an amendment to its articles of incorporation, two (2) copies of a resolution to that effect, and such additional information which the commissioner may require.

(2) The resolution must be adopted upon the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon, at any annual or special meeting of the stockholders.

(3) Both copies of the resolution shall be signed by the president or a vice president.

(4) One (1) of the copies of the resolution shall be retained by the commissioner. The other copy, if the commissioner and State Banking Board approve the amendment, shall be returned with the commissioner's endorsement of approval thereof.

(b) The amendment shall become effective when it has been approved by the commissioner and the board.

(c) Each application for authority to change a state bank's place of business shall be accompanied by a fee as shall be set by State Bank Department regulation, which fee shall be paid to the department.

History. Acts 1997, No. 89, § 1.

23-48-307. Objects and method of charter amendment.

(a) Any state bank, through amendment to its articles of incorporation, may from time to time do the following, which shall be in addition to all things it may otherwise do through amendment under the Arkansas Banking Code of 1997:

(1) Change its corporate name;

(2) Change, enlarge, or diminish its corporate purposes, in accordance with the applicable state law;

(3) Increase or decrease its authorized capital stock, subject to the limitations and in the manner set out in § 23-48-311;

(4) Effect splits of its shares or a distribution of some portion of its assets, other than cash or its own stock;

(5) Effect any fundamental change in its corporate affairs which may be accomplished by charter amendment under any other statute of Arkansas.

(b) Articles of incorporation of a state bank may be amended at any annual or special meeting of the stockholders.

(c) An amendment to the articles of incorporation may be adopted on the affirmative vote of the owners of a simple majority of each class of stock entitled to vote on the proposed amendment.

History. Acts 1997, No. 89, § 1.

section is codified as chapters 45-50 of this title.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

23-48-308. Filing of amendments to articles of incorporation.

(a)(1) An application for approval of a proposed charter amendment described in § 23-48-307 shall be submitted to the Bank Commissioner in the manner and form that the commissioner may prescribe and shall include the information set forth in subsection (b) of this section, and contain additional information which the commissioner may require.

(2) The application shall include duplicate copies of each proposed charter amendment, in the form of an amendment to the articles of incorporation, each copy to be certified by the president or a vice president.

(b) Each duplicate shall have annexed thereto, over the official signatures, a certificate showing:

(1) The date on which the amendment was authorized by the stockholders;

(2) The number of shares of each class entitled to vote on the amendment which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the amendment whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the amendment; and

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c) The commissioner may also require the delivery to him or her of additional copies of the proposed amendment that he or she may desire in order to present the matter to the State Banking Board and any parties opposing the amendment.

(d)(1) One (1) of the duplicate copies of any charter amendment filed with the commissioner and certified as prescribed in this section, bearing an endorsement of the commissioner showing that the amendment has been approved by him or her and by the board, shall be returned to the applicant state bank.

(2) The amendment shall become effective when it has been approved by the commissioner and the board.

(e)(1) Each application for approval of a proposed charter amendment described in § 23-48-307 shall be accompanied by a fee of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(2) The fee shall be set by State Bank Department regulation and shall be paid to the department.

History. Acts 1997, No. 89, § 1.

23-48-309. Names of state banks and subsidiary trust companies.

(a)(1) Prior to the formation of a state bank, or prior to the consummation of an interstate merger transaction, a person may reserve the exclusive use of a corporate name for a bank by delivering an application to the Bank Commissioner for filing.

(2) The application must set forth the name and address of the applicant and the name proposed to be reserved.

(3) If the commissioner finds that the corporate name applied for is available, he or she shall reserve the name for the applicant's exclusive use for a nonrenewable two-hundred-seventy-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the commissioner a signed notice of transfer that states the name and address of the transferee.

(c) No state bank, registered out-of-state bank, or subsidiary trust company shall conduct any business in this state under a fictitious name unless it first files with the commissioner a form supplied or approved by the commissioner giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant entity;

(2) A brief statement of the character of business to be conducted under the fictitious name; and

(3) The name, home state, and location, giving city and street address, of the registered office in this state of the applicant entity.

(d)(1) Each form shall be executed in duplicate and filed with the commissioner, who shall maintain an index of the filings.

(2) The commissioner shall retain one (1) counterpart, and the other counterpart, bearing the file marks of the commissioner, shall be returned to the state bank, registered out-of-state bank, or subsidiary trust company.

(3) However, the commissioner shall not accept the filing if the proposed fictitious name is the same as, or confusingly similar to, the name of any bank, domestic corporation, or any foreign corporation authorized to do business in this state, or any name reserved for any such entity.

(e) Copies of the filed forms, certified by the commissioner, shall be admitted in evidence when the question of filing may be material.

(f)(1) If, after filing hereunder, the applicant is dissolved, or, being a foreign corporation or registered out-of-state bank, surrenders or forfeits its rights to do business in Arkansas or ceases to do business in Arkansas under the specified fictitious name, the bank or subsidiary trust company shall be obligated to file with the commissioner a cancellation of its privilege under this section.

(2) If the cancellation is not filed, the commissioner, upon satisfactory evidence, may cancel the privilege, in which event the cancellation shall be certified by the commissioner, who will file the same without a fee.

(g)(1) If a state bank, registered out-of-state bank, or subsidiary trust company which has not filed hereunder has heretofore or shall hereafter become a party to any contract, deed, conveyance, assignment, or instrument of encumbrance in which the bank or subsidiary trust company is referred to exclusively by a fictitious name, the obligations imposed upon the bank or subsidiary trust company under the instrument and the right sought to be conferred on third parties thereunder may be enforced against it.

(2) But the rights accruing to the bank or subsidiary trust company under the instrument may not be enforced by the bank or subsidiary trust company in the courts of this state until it has complied with this section and pays to the commissioner a civil penalty of three hundred dollars (\$300).

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 9.

23-48-310. Minimum capital requirements generally.

(a) For all state banks chartered after May 30, 1997, the fully paid-up capital shall not be less than one million dollars (\$1,000,000). For all state banks, regardless of the dates of their charters, the following capital requirements shall apply:

(1) The minimum “capital base” shall be determined by the Bank Commissioner; and

(2) The capital requirements for any state bank must also satisfy the requirements for deposit insurance of the Federal Deposit Insurance Corporation or its successor.

(b)(1) The commissioner may increase the minimum capital requirement of any state bank, regardless of the date of its charter when, in the commissioner’s judgment, conditions within the state bank or the state bank’s service area warrant such an increase.

(2) In the event the commissioner orders an increase in a state bank’s capital requirement, the state bank shall have at least thirty (30) days from the date of the order to comply with the order, or such longer period as the commissioner may allow.

(3) In the event a state bank disagrees with the commissioner’s judgment in ordering an increase in its minimum capital requirement, it may appeal the commissioner’s decision to the State Banking Board. An appeal may be had by following the procedures specified by the board.

(c) Shares of a newly chartered state bank may be issued only for cash in an amount sufficient to meet the capitalization requirements set by the commissioner which shall be at least the aggregate par value of the shares plus the amounts, if any, necessary to assure that after

issuance of the shares the bank will have the minimum capital base required by the commissioner under this section and the expense fund required by § 23-48-302.

History. Acts 1997, No. 89, § 1.

23-48-311. Increase or decrease of capital stock.

(a) The authorized capital stock of any state bank may be increased or decreased by amendment to its articles of incorporation, subject to the requirements pertaining to such amendments contained in §§ 23-48-307 and 23-48-308.

(b) A capital stock increase may be effected by the issuance and sale of additional shares, which additional shares may be of the same class as the shares then outstanding or may be represented by a different class or classes having privileges, preferences, and voting rights greater or less than those appurtenant to the then outstanding shares, whether common stock or preferred stock.

(c) Stock dividends may be paid out of surplus or undivided profits.

(d) A state bank may authorize common stock, which may be retained, unissued by the institution, until such time as the board of directors shall order its sale or distribution.

(e) No decrease of the capital stock shall be permitted without the consent of the Bank Commissioner and in no event shall the capital be reduced to a figure below the minimum prescribed by law.

History. Acts 1997, No. 89, § 1.

23-48-312. Liability of shareholders — Assessment of stock.

(a)(1) Except as otherwise provided in this section, a purchaser from a state bank of its own shares is not liable to the state bank or its creditors with respect to the shares except to pay the full consideration, fixed as provided by law, for which the shares were issued or were to be issued.

(2) Except as otherwise provided in this section, or unless otherwise provided in the articles of incorporation, a shareholder of a state bank is not personally liable for the acts or debts of the state bank except that he or she may become personally liable by reason of his or her own acts or conduct.

(b)(1) When, in the opinion of the Bank Commissioner, the report of an examination of a state bank discloses bad or worthless assets which should be charged off, he or she shall immediately instruct the officers of the state bank to collect and realize upon the assets within a time fixed by him or her, and, if not collected or realized upon within that time, the assets shall immediately be charged off.

(2) If the capital, as defined by the commissioner, is thereby impaired, the commissioner shall order the directors to make an assessment upon the capital stock in form and manner as provided in subsection (c) of this section to restore capital.

(c)(1) The directors of every state bank shall have power and authority to levy and collect assessments on the stock of the state bank and shall make the levy on the order of the commissioner for the purpose of restoring any deficiency that may occur by reason of the impairment of the capital of the state bank.

(2) Should the assessment not be paid within thirty (30) days from the date the assessment is made, the assessed stock, or so much thereof as may be necessary, shall be sold at public auction to provide funds to meet the assessment.

(3) A lien is created in favor of the state bank on the stock to pay the assessments so made.

(d)(1) For purposes of this section, a state bank's capital is impaired when, in the opinion of the commissioner, its assets are of such a character and value that it is unable in the ordinary course of business to meet the minimum capital requirements as specified from time to time by administrative policies adopted by the commissioner.

(2) In the absence of fraud or collusion, the determination of the commissioner as to impairment of capital is conclusive.

History. Acts 1997, No. 89, § 1.

23-48-313. Classes of stock — Fractional shares — Scrip.

(a)(1)(A) The shares of the capital stock of any state bank may consist of shares of common stock or of common and preferred stock.

(B) Common or preferred stock may be divided into classes with the designations, preferences, limitations, retirement provisions, and relative rights as shall be stated in the articles of incorporation or an amendment thereto.

(2)(A) The voting rights of any class of stock may be denied or restricted, except that the holder of stock belonging to a class of stock issued as nonvoting shall be entitled to vote in respect to a dissolution or a merger or consolidation, or in respect to any proposal that would adversely affect the preferences, privileges, and other rights annexed to the shares.

(B) A stockholder's right to vote under Arkansas Constitution, Article 12, § 8, upon a proposal to increase the stock of the state bank may not be abridged.

(b)(1) Unless prohibited by the articles of agreement, or an amendment thereto, or by bylaws, a state bank may issue a certificate for a fractional share or, by action of its board of directors, may issue, in lieu thereof, scrip in bearer or registered form which shall entitle the holder to receive a certificate for a full share upon the surrender of the scrip aggregating a full share.

(2) Unless otherwise provided in the articles of agreement or in an amendment thereto, or in the bylaws, a fractional share shall, but scrip shall not, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.

(3) When scrip is issued, the directors may provide that it shall become void if not exchanged for certificates representing full shares before a specified date, or the board may provide that the shares for which the scrip is exchangeable may be sold by the state bank and the proceeds thereof distributed to the holders of the scrip.

History. Acts 1997, No. 89, § 1.

23-48-314. Preemptive rights of stockholders.

(a) Unless otherwise provided by the articles of incorporation, every stockholder, upon the sale for cash of any new stock of the same class as that which he or she already holds, shall have the right to purchase his or her pro rata share thereof at a price not exceeding the price at which it may be offered to others, which price may be in excess of par.

(b)(1) Where the articles of incorporation do not prohibit the preemptive rights, the terms and conditions of the rights, and the time limit fixed for the exercise thereof, may be prescribed in the articles of incorporation or, if not so prescribed in the articles of incorporation, then in the bylaws or in the resolution of the board of directors adopted in connection with the stock increase.

(2) Provided, however, that for all state banks chartered after May 30, 1997, there shall be no preemptive rights in stockholders except as specified in the articles of incorporation.

History. Acts 1997, No. 89, § 1.

23-48-315. Issuance and sale of capital notes.

(a)(1) Any state bank may, through action of its board of directors and without requiring any action by stockholders, with the written consent of the Bank Commissioner, issue and sell its capital notes at not less than par.

(2) The capital notes may be sold for cash or, with the written consent and approval of the commissioner, for property.

(b)(1) The capital notes shall be in such denominations, and the holders thereof shall be entitled to such annual return thereon, as the commissioner may approve.

(2) The capital notes shall provide that they may be retired at such time or times and in such manner as may be fixed by the board of directors of the state bank but in no event later than twenty (20) years after the date of their issuance.

(3) The par value of the notes shall not exceed one-half ($\frac{1}{2}$) of the capital base of the issuing state bank.

(4)(A) The state bank, in connection with the issue, subscription, or sale of capital notes, may confer upon the holder of each capital note the right to convert the note into shares of the common stock of the state bank on such terms as are set forth in the instrument evidencing the conversion rights. The terms may include any agreements not

repugnant to law for the protection of the conversion rights, including, but without limiting, the generality of such authority:

(i) Restrictions upon the authorization or issuance of additional shares;

(ii) Provisions for the adjustment of the conversion price or ratio;

(iii) Provisions concerning rights in the event of reorganization, merger, consolidation, or sale or other disposition of all, or substantially all, of the assets of the corporation; and

(iv) Provisions for the reservation of authorized but unissued shares to satisfy the conversion rights.

(B) If the shares into which the obligations are convertible would be subject to preemptive rights if issued for cash, the conferring of the conversion rights must be authorized at a stockholders' meeting on a vote of at least a majority of the shares of the issued and outstanding capital stock of the state bank. The vote shall release the preemptive rights to the shares required to satisfy such conversion rights.

(c)(1) Capital notes shall at the time of their issuance be, and shall at all times thereafter remain, subordinate in rank and subject to the prior payment of all types of deposits of the state bank.

(2) The state bank may, for the security and protection of the holders of the capital notes, agree upon such restrictions on the distribution or payment of dividends on its capital stock as the board of directors may decide.

(d)(1) Capital notes and accrued return thereon may be retired at any time, in whole or in part, with the written approval of the commissioner, unless otherwise provided in the capital notes.

(2) In any case in which capital notes issued under the provisions of this section are callable in a period less than twenty (20) years after their issuance, the state bank issuing the capital notes may, by a provision inserted therein to that effect, reserve the right, from time to time, to extend the time for the retirement of the capital notes. In that event, the state bank issuing the capital notes may, by vote of a majority of its board of directors, with the consent of the commissioner, make the extension.

History. Acts 1997, No. 89, § 1.

23-48-316. Transfer of stock.

(a) The stock of every state bank shall be transferrable only on the books of the bank.

(b)(1) When any number of shares of the stock of a state bank or shares of stock in an Arkansas bank holding company shall be transferred to any transferee or joint transferees, the state bank or Arkansas bank holding company shall promptly transmit to the Bank Commissioner a certificate, on a form prescribed by the commissioner, showing the transfer.

(2) The certificate also shall show the total number of shares at that time outstanding in the name of the transferee or anyone known by the

state bank or Arkansas bank holding company to be the nominee of the transferee or holding in trust for the transferee.

(3) If an Arkansas bank holding company is a reporting company under § 13 or § 15(d) of the federal Securities and Exchange Act, then the Arkansas bank holding company may satisfy the reporting requirements under this section by reporting transfers one (1) time per year at the time and in the manner required by the commissioner.

History. Acts 1997, No. 89, § 1.

U.S. Code. Sections 13 and 15(d) of the Securities Exchange Act of 1934 are codi-

fied as 15 U.S.C. §§ 78m and 78o(d), respectively.

23-48-317. Change in control.

(a) As used in this section, unless the context otherwise requires, “control” has the meaning set forth in 12 U.S.C. § 1841(a)(2).

(b)(1) Prior approval by the Bank Commissioner of any transfer of ownership shall not be required unless and until:

(A) A transfer reported to the commissioner would result in the control by the transferee and any nominee of the transferee and any person holding in trust for the transferee of twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company; or

(B) A transfer reported to the commissioner would increase a then-existing ownership of the capital stock of a state bank or Arkansas bank holding company already controlled by the transferee to twenty-five percent (25%) or more of the capital stock of the state bank or Arkansas bank holding company.

(2)(A) In either of the situations set out in subdivisions (b)(1)(A) and (B) of this section, no shares held in such ownership may be voted unless the ownership, and the transfers mentioned in subdivisions (b)(1)(A) and (B) of this section, shall be approved by the commissioner and his or her approval given to the transferee in writing.

(B) The commissioner in his or her discretion may at any time require any transferee to certify in writing as to the extent of the legal or beneficial ownership by the transferee of the stock of the state bank or Arkansas bank holding company.

(c)(1) Any transferee seeking to acquire twenty-five percent (25%) or more of the capital stock of a state bank or Arkansas bank holding company shall file with the commissioner an application for approval submitted to the commissioner in the form that the commissioner may prescribe, the application to be accompanied by a filing fee of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5000) as set by State Bank Department regulation.

(2) The application shall include the information set forth in subsection (d) of this section and contain such additional information as the commissioner may require.

(d) An application for approval to acquire control of a state bank or an Arkansas bank holding company shall contain evidence that:

(1) The proposed transaction will promote the safety and soundness of the institution to be controlled;

(2) If the applicant is a bank holding company, the transaction will not result in a violation of the provisions of § 23-48-405;

(3) The applicant bank or the bank subsidiaries of an applicant bank holding company adequately serve the convenience and needs of the communities served by them in accordance with the Community Reinvestment Act of 1977; and

(4)(A) The applicant intends to adequately serve the convenience and needs of the communities served by the state bank or state bank subsidiaries proposed to be controlled in accordance with the Community Reinvestment Act of 1977.

(B) The application shall specifically address the proposed initial capital investments, proposed loan policies, proposed investment policies, proposed dividend policies, and general plan of proposed business of the institution proposed to be controlled, including the full range of consumer and business services which are proposed to be offered.

(e) The commissioner shall approve an application to acquire control of a state bank or an Arkansas bank holding company if he or she is satisfied that:

(1) The evidence and information contained in the application would result in the likelihood that the public interest would be served;

(2) The safety and soundness of the institution to be controlled is adequately addressed; and

(3) Approval of the application, if the applicant is a bank holding company, will not result in a violation of the provisions of § 23-48-405.

History. Acts 1997, No. 89, § 1.

U.S. Code. The Community Reinvest-

ment Act of 1977, referred to in this section, is codified as 12 U.S.C. § 2901 et seq.

23-48-318. Stockholder meetings — Notice of special meeting.

(a) A special meeting of the stockholders, whether held for the purpose of amending the articles of incorporation or for any other lawful purpose, may be called as prescribed in the bylaws or, if the bylaws are silent in such respect, by the president or by resolution of the board of directors.

(b) Written notice of the special meeting shall be given to each stockholder entitled to vote at the meeting, other than stockholders who waive notice in writing, for the time and in the manner set out in the bylaws subject to the following minimum requirements:

(1) The notice must be signed by an officer of the state bank;

(2) The notice must state the time and place of the meeting and must also state the nature of the proposals to be submitted to the stockholders at the meeting;

(3) The notice must be mailed to each such stockholder, other than those waiving notice, by first-class mail, postage prepaid, directed to the stockholder at the address of the stockholder shown on the stock

records of the state bank. The depositing of the notice in the mail as above prescribed shall constitute the giving of the notice. It is not necessary in any event that the mailing be by registered or certified mail; and

(4) If the meeting is called for the purpose of increasing the authorized capital stock of the state bank, the notice shall be mailed at least sixty (60) days prior to the meeting, but if the meeting is called for any other purpose, the notice shall be mailed for such number of days prior to the meeting as may be prescribed in the bylaws. In no event shall mailing be less than ten (10) days prior to the date of the meeting.

(c) Any stockholder may waive the right to receive notice of special meetings of the stockholders by:

(1) A written waiver of the right, signed by the stockholder, which shall be effective as a waiver until revoked; or

(2) The stockholder's attendance, in person or by proxy, at the meeting.

History. Acts 1997, No. 89, § 1.

23-48-319. Stockholder meetings — Notice of annual meeting.

(a) Not less than ten (10) days' written notice of an annual meeting shall be given to each stockholder, other than stockholders who waive notice in writing, which notice shall be mailed by first-class mail, postage prepaid, and directed to the stockholder at his or her address shown on the stock records of the state bank.

(b)(1) However, if it is proposed at an annual meeting to approve an amendment to the articles of incorporation, or to approve a merger, consolidation, conversion, corporate dissolution, or reorganization through a plan of exchange, the annual meeting will be regarded, so far as these special matters are concerned, as a special meeting.

(2) It shall not be lawful to submit the special matters at an annual meeting unless, in respect to the special matters, there shall have been a call of the meeting and written notice given all as required in § 23-48-318 concerning special meetings.

History. Acts 1997, No. 89, § 1.

23-48-320. Stockholder meetings — Quorum — Voting.

(a)(1) Each share of stock shall be entitled to one (1) vote on each matter submitted at a meeting of stockholders except to the extent that the voting rights of any class are limited or denied, to an extent permitted by law, by the articles of incorporation or an amendment thereto.

(2)(A) Subject to the provisions of subsection (d) of this section, in electing directors at meetings of stockholders, each stockholder of a state bank shall have a right to vote the number of shares owned by him or her for as many persons as there are directors to be elected, or to cumulate the shares so as to give one (1) candidate as many votes

as the number of directors multiplied by the number of shares of stock held by him or her shall equal.

(B) The stockholder may distribute his or her votes on the same principle among as many candidates as he or she shall see fit, unless it is provided otherwise in the articles of incorporation or the bylaws of the state bank.

(b)(1) A majority of the issued and outstanding shares entitled to vote at the meeting shall constitute a quorum.

(2) If a quorum is present, the vote of a majority of the shares present or represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders unless the vote of a larger majority is required by the bylaws or by this or any other applicable statute.

(c)(1) A stockholder may vote in person or by written proxy.

(2) No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy, but a proxy may be of indefinite duration if coupled with an interest.

(d) For all state banks chartered after May 30, 1997, there shall be no cumulative voting privilege unless the state bank's articles of incorporation so provide.

History. Acts 1997, No. 89, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Business Law, 27 U. Ark. Little Rock L. Rev. 593.

CASE NOTES

ANALYSIS

Constitutionality.
Cumulative Voting.

Constitutionality.

Elimination of cumulative voting under this section for bank holding companies does not unconstitutionally deprive shareholders of the vested right to cumulative voting because Ark. Const. Art. 12, § 6 permits the Arkansas General Assembly to repeal, amend, or alter corporate laws at any time. *Bennett v. Lonoke Banc-*

shares, Inc., 356 Ark. 371, 155 S.W.3d 15 (2004).

Cumulative Voting.

Bank holding company is not included within this section, which governs cumulative voting; therefore, cumulative voting was not required in a bank holding company created under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., because it was not mandated in the articles of incorporation. *Bennett v. Lonoke Bancshares, Inc.*, 356 Ark. 371, 155 S.W.3d 15 (2004).

23-48-321. Closing transfer books — Fixing record date.

(a) For the purpose of determining stockholders entitled to notice of, or to vote at, any annual or special meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend, the board of directors of a state bank may provide that the stock

transfer books shall be closed for a stated period but not to exceed, in any case, seventy (70) days before the date of the meeting.

(b) In lieu of closing the stock transfer books, the board of directors may fix a date in advance of the meeting as the record date for any such determination of stockholders. The date in any case may not be more than seventy (70) days prior to the date on which the meeting is to be held.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of, or to vote at, a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring the dividend is adopted, as the case may be, shall be the record date for the determination of stockholders.

(d) When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, the determination shall apply to any adjournment thereof.

History. Acts 1997, No. 89, § 1.

23-48-322. Board of directors — Standard of conduct.

(a)(1)(A) The affairs of any state bank shall be managed and controlled by a board of directors of not fewer than three (3) persons, who shall be selected at such times and in such manner as may be provided by its bylaws.

(B) Members of the board are not required to be stockholders of the state bank or of its bank holding company unless so provided in the bylaws of the state bank.

(2) The initial board may be elected by the incorporators, with the privilege of cumulative voting to have no application to the election of the initial board.

(b) Any vacancy in the board of directors of any state bank shall be filled by appointment by the remaining directors, and any director so appointed shall hold office until the election of his or her successor.

(c) Unless the articles of incorporation, or an amendment thereto, shall provide to the contrary, the directors shall have exclusive power to promulgate, amend, or repeal bylaws of the state bank.

(d) A director of a bank which maintains its main banking office within the State of Arkansas shall discharge his or her duties as a director, including his or her duties as a member of any committees:

(1) In good faith;

(2) With the care an ordinary prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interest of the bank.

(e) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the bank whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(f) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted in subsection (e) of this section unwarranted.

(g) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

History. Acts 1997, No. 89, § 1.

23-48-323. Officers — Selection — Terms — Bonds.

(a) A state bank shall have a president, a secretary, and other officers as the directors may from time to time designate. An individual may hold more than one (1) office.

(b) The officers shall hold their offices for a term of one (1) year or until successors are elected unless sooner removed by the board of directors.

(c) The board shall require bonds of the officers as it shall deem proper and necessary to protect the funds of the state bank.

History. Acts 1997, No. 89, § 1.

23-48-324. Officers — Taking acknowledgments.

(a) An official of a bank who holds a commission as notary public may act as notary in taking the acknowledgment of mortgages and deeds of trust executed in favor of the bank. All such instruments previously acknowledged in this manner are declared to have been lawfully acknowledged and entitled to record.

(b) This section does not authorize such an official to take the acknowledgment of a deed of trust wherein he or she is named the trustee.

History. Acts 1997, No.9, § 1.

23-48-325. Banker's banks.

(a) Any state bank may purchase, for its own account, shares of a bank or bank holding company if:

(1) The stock of the bank or bank holding company whose shares are being purchased is owned exclusively by financial institutions; and

(2) The bank or bank holding company whose shares are being purchased and all subsidiaries thereof are engaged exclusively in providing services for financial institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each.

(b)(1) In no event shall the total amount of stock held by a bank in any bank or bank holding company described in subsection (a) of this section exceed at any time ten percent (10%) of the holding bank's capital base.

(2) In no event shall the purchase of that stock result in the purchasing bank's acquiring more than five percent (5%) of any class of voting securities of the bank or bank holding company whose shares are purchased.

(c) The Bank Commissioner is authorized to receive applications, hold hearings on the applications, and, with the approval of the State Banking Board, issue charters for a banker's bank.

(d) Any banker's bank chartered under this section must have its deposits insured by the Federal Deposit Insurance Corporation.

History. Acts 1997, No. 89, § 1.

23-48-326. Application of Arkansas Business Corporation Act.

All state banks and subsidiary trust companies shall be subject to current provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., to the extent that those provisions are not in conflict with the provisions of the Arkansas Banking Code of 1997. In the event that any provision of the Arkansas Business Corporation Act, § 4-27-101 et seq., is in conflict with any provision of the Arkansas Banking Code of 1997, then the provision of the Arkansas Banking Code of 1997 shall control.

History. Acts 1997, No. 89, § 1.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

title.

Banking Code of 1997 referred to in this

23-48-327. Registered office and registered agent for service of process.

(a)(1) A state bank may designate and maintain a registered office and registered agent for service of process by filing a written designation with the Bank Commissioner.

(2) The registered office:

(A) May be the same as any of the bank's places of business; and

(B) Shall have the same address as the office of the registered agent.

(3) The registered agent may be a:

(A) Resident of the State of Arkansas;

(B) State bank or domestic profit or nonprofit corporation; or

(C) Foreign profit or nonprofit corporation authorized to transact business in this state.

(4) The written designation shall contain the:

(A) Name of the state bank;

(B) Street address of the bank's registered office; and

(C) Name of the bank's registered agent at the bank's registered office.

(5)(A) The state bank may revoke the written designation by filing a statement of revocation with the commissioner.

(B) The statement of revocation is effective thirty-one (31) days after filing.

(b)(1) A state bank may change its registered office or registered agent by filing a statement of change with the commissioner that sets forth:

(A) Its name;

(B) The name and street address of its current registered office and registered agent;

(C) The name and street address of its new registered agent and registered office; and

(D) The new registered agent's written consent, either on the statement or attached to it, to the appointment.

(2) A registered agent may change the street address of the registered office of any state bank to the agent's current office by:

(A) Notifying the bank in writing of the change; and

(B) Signing, either manually or by facsimile, and filing with the commissioner a statement of change that complies with the requirements of this subsection and recites that the bank has been notified of the change.

(c)(1) The registered agent of a state bank may resign and discontinue the registered office by filing with the commissioner the original and two (2) exact or conformed copies of a signed statement of resignation.

(2) The statement of resignation may include a statement that the registered office is discontinued.

(3) The commissioner shall mail a filed copy of the statement to the registered office if not discontinued.

(4) The commissioner shall mail the other filed copy to the main office of the state bank as listed on the records of the State Bank Department.

(5) The termination of the registered agent's appointment and, if applicable, discontinuance of the registered office is effective thirty-one (31) days after the statement is filed.

(d) The State Banking Board shall provide by rule a filing fee of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for the filings under this section.

(e)(1) If a state bank designates and maintains a registered office and registered agent under this section, then the registered agent is the state bank's exclusive agent for service of any process, notice, or demand required or permitted to be served on the bank.

(2) If a state bank does not designate and maintain a registered office and registered agent under this section, then the president of the state bank is the bank's agent for service of any process, notice, or demand required or permitted to be served on the state bank.

History. Acts 2005, No. 426, § 1.

SUBCHAPTER 4 — BANK HOLDING COMPANIES

SECTION.

23-48-401. Definitions.

23-48-402. Nonapplicability of subchapter.

23-48-403. Penalties.

23-48-404. Administration.

SECTION.

23-48-405. Ownership or control of subsidiaries.

23-48-406. Acquisition of bank stock or assets — Limitations.

23-48-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Bank subsidiary", with respect to a specified bank holding company, means:

(A) Any bank, twenty-five percent (25%) or more of whose shares, excluding shares owned by the United States or by any company wholly owned by the United States, are owned or controlled by the bank holding company;

(B) Any bank, the election of a majority of whose directors is controlled in any manner by the bank holding company;

(C) Any bank, twenty-five percent (25%) or more of whose voting shares are held by a trustee for the benefit of the shareholders or members of the bank holding company;

(D) Any bank, with respect to the management or policies of which, the Board of Governors of the Federal Reserve has determined that the bank holding company has the power, directly or indirectly, to exercise a controlling influence; or

(E) Any bank which has been found by the Board of Governors of the Federal Reserve to be controlled by a bank holding company; and

(2) "Company" means any corporation, limited liability company, or business trust doing business in this state but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

History. Acts 1997, No. 89, § 1.

23-48-402. Nonapplicability of subchapter.

(a) This subchapter shall not apply to shares of any company:

(1) Acquired by a bank holding company or by a bank in satisfaction of a debt previously contracted in good faith;

(2) Which are held or acquired by a bank in good faith in a fiduciary capacity; or

(3) Which are of the kinds and amounts eligible for investments by state banks under the provisions of § 23-47-401.

(b)(1) Notwithstanding subsection (a) of this section, a bank holding company or a state bank shall dispose of shares acquired in satisfaction of a debt previously contracted in good faith within a period of two (2) years from the date on which they were acquired.

(2)(A) The Bank Commissioner is authorized upon application to extend, from time to time for up to an additional three (3) years, for not more than one (1) year at a time, the two-year period referred to in this section for disposing of any shares acquired by a bank holding company, or state bank, in the regular course of securing or collecting a debt previously contracted in good faith, if, in the commissioner's judgment, such an extension would not be detrimental to the public interest, but no extensions shall, in the aggregate, exceed three (3) years.

(B) However, a bank holding company shall not be prohibited from purchasing shares from any of its banking subsidiaries, subject to the provisions of §§ 23-48-405 and 23-48-406.

History. Acts 1997, No. 89, § 1.

23-48-403. Penalties.

(a) Any person who willfully violates any provision of this subchapter or order issued by the Bank Commissioner pursuant to this subchapter or any State Bank Department regulation is guilty of a Class A misdemeanor.

(b) Any person who willfully participates in a violation of any provision of this subchapter is guilty of a Class A misdemeanor.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 354.

23-48-404. Administration.

The Bank Commissioner is authorized to and shall administer and carry out the provisions of this subchapter and shall issue such regulations and orders as may be necessary to discharge this duty and to prevent evasions of this subchapter.

History. Acts 1997, No. 89, § 1.

23-48-405. Ownership or control of subsidiaries.

It shall be unlawful for a bank holding company to directly or indirectly own or control more than one (1) bank subsidiary if any such bank subsidiary with its main office in Arkansas has a de novo charter.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 10.

23-48-406. Acquisition of bank stock or assets — Limitations.

(a) A bank holding company is prohibited from acquiring ownership or control of the stock or the assets of any bank that has its main office or any branch office in Arkansas, if, after giving effect to the acquisition of the stock or the assets of that bank, the acquiring bank holding company would own or control, directly or indirectly, banks having in the aggregate more than twenty-five percent (25%) of the total deposits within the State of Arkansas held by banks.

(b)(1) Determinations of the percentage of total deposits required by subsection (a) of this section shall be made as of the date of acquisition of the stock or assets.

(2) The determinations shall be made with reference to the average total deposits of the respective banks as reflected on their quarterly financial reports for the four (4) fiscal quarters immediately preceding the date of acquisition as filed with the Federal Deposit Insurance Corporation, or its successor, or if the deposits of the bank are not insured by the Federal Deposit Insurance Corporation, then as filed with the State Bank Department, or its successor.

(c) For the purpose of this section, the term “deposits” shall include, without limitation, all demand, savings, time, certificates of deposit, and other similar depository accounts of any person, but shall not include depository accounts of banks or public funds.

(d)(1) Nothing in this section is intended to prevent any bank holding company domiciled in the State of Arkansas from acquiring ownership or control of banks domiciled outside the State of Arkansas if applicable state or federal laws permit the Arkansas bank holding company to do so.

(2) However, except as permitted by applicable federal law or specifically authorized by this subchapter, no bank holding company domiciled outside the State of Arkansas shall be authorized to acquire direct or indirect control of a bank domiciled within the State of Arkansas.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 11.

SUBCHAPTER 5 — MERGERS, CONSOLIDATIONS, CONVERSIONS, EMERGENCY ACQUISITIONS, PURCHASES, OR ASSUMPTIONS

SECTION.
23-48-501. Definitions.
23-48-502. Merger or conversion of state bank into national bank.
23-48-503. Merger of bank or savings and loan association into state bank.
23-48-504. Conversion of national bank or savings and loan association into state bank.

SECTION.
23-48-505. Merger of state bank into an out-of-state state-chartered bank.
23-48-506. Dissenting stockholders.
23-48-507. Continuation of corporate entity — Use of old name.
23-48-508. Resulting state bank — Time for conformance with state law.

SECTION.

23-48-509. Merger of wholly owned Arkansas bank holding company into state bank.

23-48-510. Purchases or assumptions by a state bank.

23-48-511. Commissioner's granting of new charter or branch fa-

SECTION.

cility in connection with failed institutions.

23-48-512. Provisions when resulting state bank not to exercise trust powers.

23-48-501. Definitions.

As used in this subchapter:

(1) "Converting bank" means a state bank converting to a national bank, a national bank converting to a state bank, or a savings and loan association converting to a state bank;

(2) "Dissenters' rights" means the rights of dissenting stockholders specified in § 23-48-506;

(3) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets, including all or substantially all of the branches and the assumption of all or substantially all of the liabilities of a bank whose home state is different from the home state of the acquiring bank;

(4) "Merger" includes consolidation in all sections of this subchapter except § 23-48-509;

(5) "Purchase or assumption" means the purchase by a state bank of over fifty percent (50%) of the assets of another depository institution, or the assumption by a state bank of over fifty percent (50%) of the liabilities of another depository institution;

(6) "Resulting bank" means:

(A) One (1) or more banks created from a merger or conversion; or

(B) The bank purchasing over fifty percent (50%) of the assets or assuming over fifty percent (50%) of the liabilities of another depository institution in a purchase or assumption transaction or an interstate merger transaction; and

(7) "Wholly owned Arkansas bank holding company" means a "bank holding company", as that term is defined in § 23-45-102, incorporated under the laws of the State of Arkansas, all of the outstanding shares of each class of the capital stock of which are owned by a single individual or entity.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 12; 2007, No. 170, § 1.

Amendments. The 2007 amendment deleted "unless the context otherwise re-

quires" at the end of the introductory paragraph; added (3) and (6) and redesignated subsections accordingly; and made related changes.

23-48-502. Merger or conversion of state bank into national bank.

(a) Subject to the provisions of this subchapter and provided that no Arkansas bank which is a party to the merger has a de novo charter, a state bank may merge into a national bank, including a national bank with a home state other than Arkansas.

(b) The action to be taken by a merging or converting state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks, at the time of the action, by the laws of the United States, and not by the law of this state, except that:

(1) The assenting vote of the holders of a simple majority of each class of voting stock of a state bank shall be required for the merger or conversion;

(2) Upon the merger of a state bank into a national bank, the stockholders of the state bank shall have dissenters' rights; and

(3) If the national bank is an out-of-state bank, then § 23-48-901 et seq. shall be applicable to the merger.

(c)(1) No approval by the Bank Commissioner or by any other state authority shall be necessary for a state bank to convert or merge into a resulting national bank as provided by federal law.

(2) However, within ten (10) days following the effective date of the merger or conversion, the resulting bank shall be required to file in the office of the commissioner, a complete copy of the articles of merger or conversion. This copy must be certified by the president or a vice president of the resulting bank.

(d) Upon the completion of the merger or conversion, the charter of any merging or converting state bank shall automatically terminate.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 13.

23-48-503. Merger of bank or savings and loan association into state bank.

(a)(1)(A) With the approval of the Bank Commissioner and the State Banking Board and after a public hearing as prescribed by the applicable law of this state, any bank, including an out-of-state bank upon compliance with § 23-48-901 et seq., or savings and loan association may be merged with a state bank creating one (1) or more resulting banks.

(B) However, if any national bank, out-of-state bank, or savings and loan association is involved in the merger under subdivision (a)(1)(A) of this section, there shall be compliance with the requirements of the state or federal laws applicable to the national bank, out-of-state bank, or savings and loan association.

(2)(A) A plan of merger involving a state bank shall provide:

(i) The name of each party to the merger;

(ii) The name of each entity that will result from the merger; and

(iii) The terms and conditions of the merger.

(B) If more than one (1) bank, out-of-state bank, or savings and loan association will result or be created by the terms of the plan of merger, the terms and conditions of the merger shall include:

(i) The manner and basis of allocating and vesting the assets from the merger among one (1) or more of the parties;

(ii) The name of the party that will be obligated to pay the fair value of any shares of stock of a bank that is a party to the merger that are held by a stockholder that has complied with the requirements of § 23-48-506 for the recovery of the fair value of the stockholder's shares; and

(iii) Either of the following:

(a) The manner and basis of allocating the liabilities and obligations of each bank, out-of-state bank, or savings and loan association that is a party to the merger among one (1) or more of the parties; or

(b) Adequate provision for the payment and discharge of the liabilities and obligations of each bank, out-of-state bank, or savings and loan association that is a party to the merger among one (1) or more of the parties.

(3) A bank, including an out-of-state bank, or savings and loan association may merge into a state bank if none of the Arkansas banks that are parties to the merger has a de novo charter.

(4)(A) The applicant shall file an application with the commissioner containing the information that the commissioner requires.

(B) If an out-of-state bank is a party to the merger, all applicable provisions of § 23-48-901 et seq. and the applicable law of the home state of the merging bank shall be satisfied.

(5)(A) The assenting vote of a simple majority of each class of voting stock of the merging banks and resulting bank shall be required for the merger.

(B) However, a vote of the shareholders of the resulting bank shall not be required if the number of shares to be issued in connection with the merger does not exceed twenty percent (20%) of the outstanding shares of the resulting bank before the merger.

(b) The commissioner shall provide the board with the results of the investigation of the application.

(c) The commissioner shall approve the application if at the hearing both the commissioner and the board find that:

(1) The proposed merger provides adequate capital structure;

(2) The terms of the merger agreement are fair;

(3) The merger is not contrary to the public interest;

(4) The proposed merger adequately provides for dissenters' rights; and

(5) The requirements of all applicable state and federal laws have been complied with.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 14; 2007, No. 170, § 2; 2009, No. 164, § 12.

in (a), redesignated (a)(1), substituted "creating one (1) or more resulting banks" for "to result in a state bank" in present (a)(1)(A), inserted "under subdivision

Amendments. The 2007 amendment,

(a)(1)(A) of this section” in present (a)(1)(B), added (a)(2) and redesignated (a)(2), (a)(4), and (a)(5), and made related the following subdivisions accordingly, and minor stylistic changes. and made related and stylistic changes.

23-48-504. Conversion of national bank or savings and loan association into state bank.

(a) A national bank or savings and loan association having its main office in this state which follows the procedure prescribed by applicable federal or other law may convert into a state bank and may be granted a charter by the State Banking Board with the concurrence of the Bank Commissioner.

(b) The national bank or savings and loan association may apply for a state charter by filing with the commissioner an application containing the information that the commissioner may require along with a certificate signed by its president or a vice president setting forth the action taken in compliance with the provisions of the applicable laws, accompanied by the articles of incorporation approved by a majority vote of the stockholders for the governance of the applicant as a state bank.

(c) The public hearing at which the issuance of the state charter is authorized shall be called by the commissioner:

(1) On not less than fourteen (14) days' written notice to the applicant and to each member of the board; and

(2) Upon publication in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, at least fourteen (14) days before the hearing, the publication to show the time, place, and purpose of the hearing.

(d) If, at the hearing, both the commissioner and the board find that the proposed state bank meets the standards as to location of offices, capital structure, and character of officers and directors required for the incorporation of a state bank, they shall grant the application for conversion.

History. Acts 1997, No. 89, § 1.

23-48-505. Merger of state bank into an out-of-state state-chartered bank.

(a) Subject to the provisions of this subchapter and provided that no Arkansas bank which is a party to the merger has a de novo charter, a state bank may merge into an out-of-state bank.

(b) The action to be taken by a merging state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for the out-of-state state-chartered banks, at the time of the action, by the laws of the home state of the out-of-state state-chartered bank, and not by the law of this state, except that:

(1) The assenting vote of the holders of a simple majority of each class of voting stock of a state bank shall be required for the merger; and

(2) Upon the merger of a state bank into an out-of-state state-chartered bank, the stockholders of the state bank shall have dissenters' rights.

(c) The merger shall only be consummated after compliance with all applicable provisions of § 23-48-901 et seq.

(d) Upon the completion of the merger, the charter of any merging state bank shall automatically terminate.

History. Acts 1997, No. 408, § 15.

Publisher's Notes. Former § 23-48-505 has been renumbered as § 23-48-512.

23-48-506. Dissenting stockholders.

(a) For purposes of this section, with respect to a state bank:

(1) "Corporate action" means:

(A) Consummation of a merger to which the state bank is a party;

(B) Consummation of a sale or transfer of over fifty percent (50%) of the state bank's assets to another depository institution; or

(C) Consummation of a sale or transfer of over fifty percent (50%) of the state bank's liabilities to another depository institution; and

(2) "Selling bank" means a state bank selling or transferring over fifty percent (50%) of its assets or over fifty percent (50%) of its liabilities to another depository institution.

(b)(1) The owner of shares of a state bank which were not voted for a corporate action, and who has given notice in writing to the state bank at or prior to the meeting of the stockholders approving the corporate action, that he or she dissents from the corporate action shall be entitled to receive in cash the value of the shares held by him or her, if the dissenting stockholder has delivered a written demand for payment to the resulting bank at any time within ten (10) days after the date on which the stockholders' meeting authorizing the corporate action was concluded.

(2) This written demand for payment shall state the number and the class of shares owned by the dissenting stockholder. Any dissenting stockholder failing to make the demand shall be bound by the terms of the purchase or assumption, or merger.

(3)(A) The resulting bank shall fix an amount, which it considers to be not more than the fair market value of the shares of the merging, resulting, or selling bank as of the date on which the stockholders' meeting authorizing the corporate action was concluded, which it will offer to pay dissenting stockholders entitled to payment in cash.

(B) Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his or her shares, the resulting bank shall give the dissenting stockholder notice of the amount it will pay for dissenting shares within twenty (20) days after

the date on which the stockholders' meeting authorizing the corporate action was concluded.

(4) Any dissenting stockholder may agree to accept the amount in lieu of pursuing the appraisal remedy set forth in subdivision (c)(1) of this section by delivering a written acceptance of the offer to the resulting bank within thirty (30) days after the date on which the stockholders' meeting authorizing the corporate action was concluded.

(c)(1) The value of shares held by dissenting stockholders entitled to receive in cash the value of the shares held by them, who do not accept the offer of the resulting bank within the thirty-day period set forth in subdivision (b)(4) of this section, shall be determined as of the date on which the stockholders' meeting authorizing the corporate action was concluded by three (3) appraisers. The appraisers are to be chosen as follows:

(A) One (1) shall be selected by the dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by the dissenting stockholders;

(B) One (1) shall be selected by the board of directors of the resulting bank; and

(C) The third shall be selected by the two (2) so chosen.

(2) The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern. However, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided herein, the stockholder may, within five (5) days after being notified of the appraised value of his or her shares, appeal to the Bank Commissioner, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant.

(3) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the corporate action was concluded, for any reason, one (1) or more of the appraisers is not selected as provided in this section, or the appraisers fail to determine the value of dissenting shares, the commissioner shall, upon written request of any interested party made within five (5) days after the expiration of the ninety-day period, cause an appraisal to be made which shall be final and binding upon all parties.

(d)(1) The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders.

(2) The expenses of the appraiser selected by the board of directors of the resulting bank shall be paid by the resulting bank.

(3) The expenses of the third appraiser shall be paid by and prorated among the dissenting stockholders and the resulting bank in such a manner as is determined by the commissioner to be fair and equitable under the circumstances.

(e)(1) If the commissioner is required to make the appraisal, his or her expenses in making the appraisal shall be paid by and prorated among the dissenting stockholders and the resulting bank in such a manner as is determined by the commissioner to be fair and equitable under the circumstances.

(2) If the commissioner is required to make a reappraisal, his or her expenses in making the reappraisal shall be paid by the appellant.

(f) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the corporate action was concluded, for any reason, one (1) or more of the appraisers are not selected as provided in this section or the appraisers fail to determine the value of dissenting shares, and if no written request to value the dissenting shares is filed with the commissioner within five (5) days after the expiration of the ninety-day period, then all dissenting stockholders who have failed to accept the offer of the resulting bank within the thirty-day period prescribed in subdivision (b)(4) of this section shall be bound by the terms of the purchase or assumption, or merger.

(g) The amount due a dissenting stockholder under an accepted offer of the resulting bank or under the appraisal shall constitute a debt of the resulting bank which must be paid, if and when the purchase or assumption, or merger, is consummated, simultaneously with the surrender by the dissenting stockholder of his or her shares.

(h) Within ten (10) days after the corporate action, the resulting bank shall give written notice of the consummation of the corporate action to each dissenting stockholder who is entitled to receive in cash the fair value of his or her shares.

(i) The plan of merger, or the plan of purchase or assumption, shall provide for payment of or the manner of disposing of any shares of the resulting bank not taken by dissenting stockholders.

History. Acts 1997, No. 89, § 1.

23-48-507. Continuation of corporate entity — Use of old name.

(a) A resulting bank shall be the same business and corporate entity as each party to the merger or as the converting bank, with all the property, rights, powers, liabilities, and duties of each party to the merger or the converting bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank and by the charter and bylaws of the resulting bank.

(b) A resulting bank shall have the right to use the name of any party to the merger or of the converting bank whenever it can more conveniently do any act under that name.

(c) Any reference to a party to the merger or converting bank in a contract, will, or document, whether executed or taking effect before or after the merger or conversion, shall be deemed to refer and apply to the resulting bank if not inconsistent with the other provisions of the writing.

History. Acts 1997, No. 89, § 1.

23-48-508. Resulting state bank — Time for conformance with state law.

If a party to a merger or converting bank has assets which do not conform to the requirements of state law for the resulting state bank or if it carries on business activities which are not permitted for the resulting state bank, the Bank Commissioner may permit a reasonable time in which to conform with state law.

History. Acts 1997, No. 89, § 1.

23-48-509. Merger of wholly owned Arkansas bank holding company into state bank.

(a) With the approval of the Bank Commissioner, any wholly owned Arkansas bank holding company that owns all of the outstanding shares of each class of the capital stock of a subsidiary state bank may be merged into the bank to result in a state bank without the approval of the shareholders of either the wholly owned Arkansas bank holding company or the state bank, provided that the merger otherwise complies with the then-applicable law of this state.

(b) The board of directors of the wholly owned Arkansas bank holding company and the board of directors of the state bank shall adopt a plan of merger that sets forth:

(1) The names of the wholly owned Arkansas bank holding company and state bank; and

(2) The manner and basis of converting the shares of the wholly owned Arkansas bank holding company into shares of the state bank.

(c) The articles of merger containing the plan of merger, signed by each constituent corporation by its president or a vice president, shall be filed with the commissioner in the manner required by law for the merger of state banks, and after the commissioner's approval, with the Secretary of State in the manner required by law for the merger of business corporations.

(d) The articles of merger shall become effective upon the filing of the articles with the Secretary of State and, not more than sixty (60) days after the approval of the articles by the commissioner, as may be specified in the articles as the time when the merger shall become effective.

History. Acts 1997, No. 89, § 1.

23-48-510. Purchases or assumptions by a state bank.

(a)(1) With the approval of the State Banking Board and the concurrence of the Bank Commissioner and subject to the provisions of this subchapter and provided that no party to a proposed transaction has a de novo charter, a state bank may purchase all or a majority of the assets or assume all or a majority of the liabilities of another depository institution.

(2)(A) The agreement of purchase and sale shall be authorized and approved by the boards of directors of the purchasing state bank and selling depository institution.

(B) The agreement shall be approved by the affirmative vote of the holders of at least a simple majority of the outstanding shares of the selling depository institution entitled to vote thereon, at a meeting called for the purpose in like manner as meetings to approve mergers are called, and an application containing the information that the commissioner may require shall be filed with the commissioner.

(3) The commissioner shall cause the application to be investigated as soon as practicable, and the application and the results of the investigation shall be forwarded to the board.

(4) The board shall hold a public hearing on the application pursuant to notice and procedure required for the applications.

(5) The commissioner shall approve the application if, at the hearing, both the commissioner and the board find that the proposed purchase or assumption:

(A) Provides adequate capital structure;

(B) Is fair;

(C) It is not contrary to public interest; and

(D) Adequately provides for dissenters' rights for the stockholders of any selling state bank.

(b)(1) With the approval of the commissioner, a state bank may assume less than a majority of the liabilities of another depository institution.

(2) The agreement of purchase and sale for the assumption of the liabilities referred to in subdivision (b)(1) of this section shall be authorized and approved by the boards of directors of the assuming state bank and selling depository institution.

(3)(A) A state bank seeking to assume less than a majority of the liabilities of another depository institution shall file with the commissioner an application containing the information that the commissioner may require.

(B) The commissioner shall have the application investigated as soon as practicable and shall approve the application if he or she is satisfied that the proposed assumption:

(i) Provides adequate capital structure;

(ii) Is fair; and

(iii) Is not contrary to public interest.

(c) No approval by the commissioner or the board is required for the purchase by a state bank of less than a majority of the assets of another depository institution.

History. Acts 1997, No. 89, § 1.

23-48-511. Commissioner's granting of new charter or branch facility in connection with failed institutions.

(a) Upon application of either individual incorporators or a bank holding company, the Bank Commissioner is authorized to grant a state bank charter to the applicant immediately and without the approval of the State Banking Board if the commissioner finds that the immediate formation of a new state bank will protect the depositors of a failed depository institution when the receiver of the failed depository institution has solicited bids for the sale of its deposits.

(b) The commissioner is further authorized to grant more than one (1) state bank charter pursuant to solicitation of bids by the receiver of a failed depository institution should the receiver determine to solicit bids for deposits at separate offices or branches of a failed depository institution.

(c) Any state bank charter granted by the commissioner pursuant to this section shall not be considered a de novo charter as that term is defined in § 23-45-102.

(d)(1) The commissioner may grant a branch bank application for a state bank to acquire the deposits and operate a branch of a failed depository institution regardless of state law limiting branch locations should the application be submitted pursuant to the solicitation of bids by the receiver of a failed depository institution and should the commissioner find the action would protect depositors of the failed depository institution.

(2) The commissioner may grant an application for a state bank to acquire deposit liabilities without continued operation of a bank facility if the applicant has submitted an application therefor pursuant to this section.

History. Acts 1997, No. 89, § 1.

23-48-512. Provisions when resulting state bank not to exercise trust powers.

When a resulting state bank is not to exercise trust powers, the Bank Commissioner shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 15. codified as § 23-48-505 by Acts 1997, No. 89 and renumbered as § 23-48-512 by

Publisher's Notes. This section was Acts 1997, No. 408.

SUBCHAPTER 6 — REORGANIZATION THROUGH PLAN OF EXCHANGE

SECTION.

23-48-601. Authority to adopt plan of exchange — Approval by Bank Commissioner required.

SECTION.

23-48-602. Procedure for adopting and filing plan of exchange.
23-48-603. Dissenting from plan of exchange.

SECTION.

23-48-604. Effect of exchange.

23-48-605. State bank and holding company to remain separate
— Nonliability of directors, officers, etc.

Effective Dates. Acts 2001, No. 65, § 3: Feb. 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly, that it is immediately necessary for the fair and efficient administration of this act that, among other things, the criteria for the determination of the fairness and equity to the shareholders involved in the transactions covered by the plans of exchange be revised. Therefore, an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-48-601. Authority to adopt plan of exchange — Approval by Bank Commissioner required.

(a)(1) A state bank may adopt a plan of exchange for shares of the outstanding capital stock held by its stockholders, for the consideration designated in this section to be paid or provided by a bank holding company which acquires the stock, in the manner provided in this subchapter, by complying with the provisions of this subchapter, subject to subsections (b) and (c) of this section.

(2) The plan of exchange may provide that the bank holding company, as the acquiring person, as consideration for the stock of the state bank may:

- (A) Transfer shares of its capital stock;
- (B) Transfer other securities issued by it;
- (C) Pay cash;
- (D) Pay or provide other consideration; or
- (E) Pay or provide any combination of the foregoing types of consideration.

(b) No such plan of exchange shall be effectuated unless, in advance thereof, the plan has been filed with the Bank Commissioner and approved in writing by him or her after notice and a hearing thereon. The commissioner shall give approval within a reasonable time after the hearing if he or she finds that the plan:

- (1) Complies with the law;
- (2) Is fair and equitable to the stockholders of the state bank involved;
- (3) Provides a satisfactory means for disposing of shares of the state bank resulting from dissenting stockholders; or

(4) Would not substantially reduce the security of or service to be rendered to depositors or other customers of the state bank or any affiliate bank of the state bank or the bank holding company.

(c) No director, officer, agent, or employee of any party to an exchange of stock shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in the plan of exchange.

(d) If the commissioner does not approve the plan of exchange, the commissioner shall notify the state bank in writing specifying the reasons therefor.

(e)(1) For every plan of exchange filed with the commissioner under subsection (b) of this section, there shall be paid to the State Bank Department by the state bank involved a filing fee equal to one-tenth percent (0.1%) of the paid-up capital stock of the state bank.

(2) However, the fee shall in no case be less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

(3) In addition, the state bank shall pay all expenses and costs of the department incurred in connection with the plan of exchange and the hearing thereon including, but not limited to, travel expenses, mail and delivery charges, copying costs, and court reporters' fees.

(4) The commissioner may by order reduce or waive the filing fee, but not the payment of the expenses and costs of the department, if the commissioner determines that the fee is excessive under the circumstances.

History. Acts 1997, No. 89, § 1; 1999, No. 117, § 1; 2001, No. 65, § 1.

CASE NOTES

ANALYSIS

In General.
Authority Exceeded.

In General.

This section is clear on its face that the sale of the shares must be a sale of "all" shares under subsection (a)(1). *Ford v. Keith*, 338 Ark. 487, 996 S.W.2d 20 (1999).

Authority Exceeded.

A proposed plan of exchange exceeded the authority and scope of this section where the plan constituted a forced sale, or "freeze-out," of the non-favored minority shareholders' property to the control group. *Ford v. Keith*, 338 Ark. 487, 996 S.W.2d 20 (1999).

23-48-602. Procedure for adopting and filing plan of exchange.

(a) The directors, consisting of at least a majority, of a state bank and bank holding company who desire to adopt a plan of exchange pursuant to this subchapter shall adopt a plan of exchange, signed by them under their respective corporate seals, which shall prescribe and set forth:

- (1) The terms and conditions of the plan of exchange;
- (2) The mode of carrying it into effect;
- (3) Provisions with respect to abandonment;

(4) The effective date of the exchange of shares or the method of determination thereof;

(5) The manner and basis of any cash payment or issuance or exchange of shares of stock or other securities of the bank holding company for shares of the state bank; and

(6) Such other details and provisions as are deemed necessary or desirable.

(b)(1) The plan of exchange shall be submitted to the stockholders of the state bank to be acquired at a meeting thereof called for that purpose.

(2) Notice shall be given of the time, place, and purpose of the meeting to each stockholder or member of record, whether entitled to vote or not.

(3) A copy of any proxy statement or other solicitation materials provided to the shareholders of the state bank shall be filed with the Bank Commissioner on or before delivery to the shareholders.

(4)(A) At the meeting, the plan of exchange shall be considered by the stockholders entitled to vote thereon.

(B) A vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the plan.

(C) Unless otherwise provided in the state bank's articles of incorporation for voting on a plan of exchange, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of the state bank entitled to vote thereon.

(D) However, if any class of shares of the state bank is entitled to vote as a class on the plan, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least a simple majority of the outstanding shares of each class of shares entitled to vote as a class on the plan and the total outstanding shares entitled to vote on the plan.

(E) If the plan of exchange is approved by the stockholders of the state bank, then that fact shall be certified in the plan by the president or a vice president of the state bank.

(5) The plan so adopted and certified shall be signed by the president or a vice president of each party to the plan of exchange and acknowledged before an officer authorized by law to take acknowledgment of deeds.

(c) The plan, adopted and certified as provided in subsection (b) of this section, shall be filed in duplicate originals with the Bank Commissioner prior to the hearing on the plan and within ten (10) days following the approval of stockholders and, after approval thereof by the commissioner as provided in § 23-48-601, shall be taken and deemed to be the plan of exchange of the parties thereto.

(d) Any plan of exchange may be abandoned in conformity with the terms thereof as approved by the commissioner provided, in that event, due notice of abandonment shall be forthwith transmitted to the stockholders of the state bank, and to the secretary of the bank holding

company which are parties thereto, within ten (10) days of the abandonment in a manner and form prescribed or approved by the commissioner.

History. Acts 1997, No. 89, § 1; 2001, No. 65, § 2.

23-48-603. Dissenting from plan of exchange.

(a)(1) The owner of shares of a state bank which were voted against a plan of exchange, and who has given notice in writing to the state bank at or prior to the meeting of the stockholders approving the plan that he or she dissents from the plan of exchange, shall be entitled to receive in cash the value of the shares held by him or her, if:

(A) The plan of exchange is consummated; and

(B) The dissenting stockholder has delivered a written demand for payment to the state bank at any time within ten (10) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(2)(A) This written demand for payment shall state the number and the class of shares owned by the dissenting stockholder.

(B) Any dissenting stockholder failing to make such a demand shall be bound by the terms of the plan of exchange.

(3)(A) The state bank shall fix an amount which it considers to be not more than the fair market value of the shares of the state bank as of the date on which the stockholders' meeting authorizing the plan of exchange was concluded, which it will offer to pay dissenting stockholders entitled to payment in cash.

(B) Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his or her shares, the state bank shall give the dissenting stockholder notice of the amount it will pay for dissenting shares within twenty (20) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(4) Any dissenting stockholder may agree to accept the amount in lieu of purchasing the appraisal remedy set forth in subsection (b) of this section by delivering a written acceptance of the offer to the state bank within thirty (30) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded.

(b)(1) The value of shares held by dissenting stockholders, entitled to receive in cash the value of the shares held by them, who do not accept the offer of the state bank within the thirty-day period set out in subdivision (a)(4) of this section shall be determined as of the date on which the stockholders' meeting authorizing the plan of exchange was concluded by three (3) appraisers:

(A) One (1) shall be selected by the dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by the dissenting stockholders;

(B) One (1) shall be selected by the board of directors of the state bank; and

(C) The third shall be selected by the two (2) so chosen.

(2)(A) The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern.

(B)(i) However, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided in subdivision (a)(1) of this section, the stockholder may, within five (5) days after being notified of the appraised value of his or her shares, appeal to the Bank Commissioner.

(ii) The commissioner shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant.

(3) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as provided in subdivision (b)(1) of this section, or the appraisers fail to determine the value of dissenting shares, the commissioner shall, upon written request of any interested party made within five (5) days after the expiration of the ninety-day period, cause an appraisal to be made which shall be final and binding upon all parties.

(c)(1) The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders.

(2) The expenses of the appraiser selected by the board of directors of the state bank shall be paid by the state bank.

(3) The expenses of the third appraiser shall be paid by and prorated among the dissenting stockholders and the state bank in such manner as is determined by the commissioner to be fair and equitable under the circumstances.

(d)(1) If the commissioner is required to make the appraisal, the expenses of the commissioner in making the appraisal shall be paid by and prorated among the dissenting stockholders and the state bank in such manner as is determined by the commissioner to be fair and equitable under the circumstances.

(2) If the commissioner is required to make a reappraisal, the expenses of the commissioner in making the reappraisal shall be paid by the appellant.

(e) If, within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as provided in subsection (b) of this section or the appraisers fail to determine the value of dissenting shares, and, if no written request to value the dissenting shares is filed with the commissioner within five (5) days after the expiration of the ninety-day period, then all dissenting stockholders who have failed to accept the offer of the state bank within the thirty-day period prescribed in subdivision (a)(4) of this section shall be bound by the terms of the plan of exchange.

(f) The amount due a dissenting stockholder under an accepted offer of the state bank or under the appraisal shall constitute a debt of the state bank which must be paid, if and when the plan of exchange is

consummated, simultaneously with the surrender by the dissenting stockholder of his or her shares.

(g) Within ten (10) days after the plan of exchange is consummated, the state bank shall give written notice thereof to each dissenting stockholder who is entitled to receive in cash the fair value of his or her shares.

(h) The plan of exchange shall provide for payment of or the manner of disposing of any shares of the state bank not taken by dissenting stockholders.

History. Acts 1997, No. 89, § 1.

CASE NOTES

Interest.

This section did not allow the Arkansas Bank Commissioner to award interest to dissenting shareholders for the period between the date the surviving bank tendered an offer of the fair value of the shares until the final determination of the

value of the shares after the appraisal process because the Arkansas General Assembly did not grant the Commissioner the authority to award either prejudgment or postjudgment interest under this section. *Brookshire v. Adcock*, 2009 Ark. 207, 307 S.W.3d 22 (2009).

23-48-604. Effect of exchange.

(a)(1) When the plan of exchange of shares as filed with the Bank Commissioner and approved by the commissioner under § 23-48-603 becomes effective in accordance with the terms of the plan, the exchange provided for therein shall be deemed to have been consummated, and each shareholder of the state bank whose shares were acquired shall thereupon cease to be a shareholder of the state bank.

(2) The ownership of shares acquired in the plan of exchange, except shares payment of the value of which is required to be made under § 23-48-603, hereinafter sometimes referred to as “dissenting shares”, shall automatically vest in the bank holding company as the acquiring person without any physical transfer or deposit of certificates representing the shares.

(3) All dissenting shares shall be considered authorized but no longer outstanding shares of the state bank and may be disposed of in accordance with the provisions of the plan of exchange or as otherwise approved by the commissioner.

(b)(1) Certificates representing shares acquired in the plan of exchange of the state bank prior to the plan of exchange’s becoming effective, except certificates representing dissenting shares, shall represent, after the plan of exchange becomes effective:

(A) Shares of the capital stock or other securities of the bank holding company to be issued in exchange for shares of the state bank; and

(B) The right, if any, to receive cash or other consideration upon terms specified in the plan of exchange.

(2) However, the plan of exchange may specify that all such certificates shall represent, after the plan of exchange becomes effective, only

the right to receive shares of stock or other securities issued by the bank holding company, cash, or a combination thereof upon such terms as specified in the plan of exchange.

History. Acts 1997, No. 89, § 1; 1999, No. 117, § 2.

23-48-605. State bank and holding company to remain separate — Nonliability of directors, officers, etc.

The state bank and the bank holding company shall remain separate and distinct entities in all respects, with neither entity having any liability to the creditors or depositors, if any, or the stockholders of the other, or for any acts or omissions of the officers, directors, stockholders, or representatives of the other, other than obligations which may be expressly provided for in the plan of exchange.

History. Acts 1997, No. 89, § 1; 1999, No. 117, § 3.

SUBCHAPTER 7 — BRANCH OFFICES

SECTION.

- 23-48-701. Definitions.
- 23-48-702. Establishment of full-service branches and limited-purpose offices — Locations.
- 23-48-703. Establishment of full-service branch — Standards and procedure.

SECTION.

- 23-48-704. Preexisting facilities.
- 23-48-705. Notice of termination of full-service branch.

Effective Dates. Acts 2007, No. 42, § 4: Jan. 30, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal and out-of-state banks have the benefit of less cumbersome branch application procedures and policies; that state-chartered banks are thereby placed at a competitive disadvantage; and that this act is necessary to help state-chartered banks compete with other banks and to allow the Bank Commissioner appropriate flexibility in administering the state’s banking laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Gov-

ernor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”
Acts 2011, No. 796, § 6: Mar. 30, 2011. Emergency clause provided: “It is found and determined by the General Assembly that federal law allows out-of-state bank holding companies to acquire control of Arkansas banks; that the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 preempts all state laws prohibiting branching by all banks across state lines; and that this act is necessary to amend and repeal certain provisions within the Arkansas Banking Code pertaining to the authority of Arkansas banks to establish branch bank facilities outside the State of Arkansas and out-of-state banks to establish branch facilities within the State of Arkansas. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

23-48-701. Definitions.

As used in this subchapter:

(1)(A) “Full service branch” means a banking facility separate from the main office of the bank at which all lawful banking activities may be conducted as fully as in the main office.

(B) “Full service branch” includes a mobile facility that:

(i) Conducts banking business within the same county as the main office or another full service branch of the bank;

(ii) Does not have a single, permanent site;

(iii) Does not remain within five (5) miles of any banking location for more than two (2) business days;

(iv) Travels to various locations within the county to enable customers to conduct banking business; and

(v) Maintains a log of operations indicating the date and specific location of each stop;

(2) “Healthy bank” means a state bank whose financial condition satisfies the criteria established by State Bank Department regulation; and

(3) “Supervisory banking authority” means the Bank Commissioner for state banks and the Comptroller of the Currency for national banks.

History. Acts 1997, No. 89, § 1; 2005, No. 1816, § 1; 2007, No. 42, § 1.

inserted present (2), redesignated former (2) as present (3), and made a related

Amendments. The 2007 amendment

change.

23-48-702. Establishment of full-service branches and limited-purpose offices — Locations.

(a)(1) No bank shall engage in core banking activities, receiving deposits, paying checks, or lending money at any location other than at a main banking office or full-service branch, except as otherwise permitted by law.

(2) Unless otherwise restricted by applicable law, banks may engage in permitted activities other than core banking activities at a main office, any branch, or a limited purpose office.

(3)(A) All communities and banking markets shall be presumed to be suitable for bank branches.

(B) The prior existence of a main or branch office of any bank in a community does not grant the bank any right or power to preclude any other bank from branching into the community.

(b)(1)(A) An Arkansas bank may establish a full-service branch anywhere within the United States with the approval of its supervisory banking authority.

(B) A state bank that relocates its main banking office may continue to use its former main banking office location as a full-service branch as long as the use of the banking facility is uninterrupted.

(2) A registered out-of-state bank may establish a full-service branch anywhere within the State of Arkansas:

(A) With the approval of its bank supervisory agencies; and

(B) Upon receiving a certificate of authority from the Bank Commissioner.

(3) An Arkansas bank possessing a capital and surplus of one million dollars (\$1,000,000) or more may file an application with the commissioner for permission to exercise, upon such conditions as the commissioner may prescribe, the power to establish branches in foreign countries or dependencies or insular possessions of the United States and to act as fiscal agent for any government entity.

(4) Notwithstanding any other provisions of state law regarding locations of full-service branches, a federal or state savings bank or association chartered and in operation before August 13, 2001, with branches in operation in one (1) or more states, may convert to a state bank in accordance with § 23-48-504 and may retain its branches, both in state and out of state, as branches of the state bank.

(c)(1) None of the provisions of this section which restrict the locations in which full-service branches may be established shall be effective in emergency instances in which the purchase or assumption of the assets and liabilities of a failed bank becomes necessary due to state or federal regulatory action.

(2) The restrictions on the location of banking services by an authorized bank may be suspended by the commissioner during a disaster, emergency, or other cause which disables the operation of a permanent location of the bank under the terms and conditions considered appropriate by the commissioner.

(d)(1) Any state bank may file a notice with the Bank Commissioner to relocate any existing full-service branch to another location then authorized by law.

(2) A fee of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) established by State Bank Department regulation shall accompany the notice.

(3) The notice shall:

(A) Be filed not less than thirty (30) days prior to the proposed relocation; and

(B) Contain any information concerning the new location required by the commissioner.

(4) The commissioner shall approve the relocation unless it is determined that the relocation is not consistent with the standards contained in § 23-48-703(a).

(5)(A) No notice to relocate a full-service branch is required if:

(i)(a) A full-service branch is:

(1) Opened or built within the immediate neighborhood of an existing branch; or

(2) Opened, built, or established as a result of the consolidation of two (2) or more banks within the immediate neighborhood of an existing branch or main office of a bank.

(b) The existing branch or main office may be closed upon the opening of the new branch;

(ii) The nature of the business and customers of the branch are not substantially affected; and

(iii) A notice and filing fee of no more than two hundred fifty dollars (\$250) as prescribed by the commissioner is filed with the department.

(B) As used in subdivision (d)(5)(A) of this section, “within the immediate neighborhood” includes, but is not limited to:

(i) Across the street;

(ii) Around the corner;

(iii) Within two (2) blocks;

(iv) Within one thousand feet (1,000'); or

(v) In densely populated areas, within five thousand feet (5,000').

(e)(1) Any bank may establish a limited-purpose office anywhere in the state to conduct noncore banking activities upon satisfaction of the notice requirement set forth in this subsection.

(2) As to each limited-purpose office which a bank proposes to establish or use, the bank shall give not fewer than thirty (30) days' prior written notice of its intention to establish or use the limited-purpose office to:

(A) The commissioner, in the case of a state bank;

(B) The home state regulator, in the case of a registered out-of-state bank which is an out-of-state state-chartered bank; or

(C) The Comptroller of the Currency, in the case of a national bank.

(3) The notice shall be in such form that may be required by the regulatory authority with which the notice is to be filed and shall include the following information:

(A) The location and a general description of the surrounding area;

(B) Whether the location will be owned or leased;

(C) The noncore banking activities to be conducted;

(D) An estimate of the initial cost of the limited-purpose office; and

(E) Such other relevant information as may be required by the regulatory authority.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 16; 1999, No. 113, § 6; 2001, No. 62, §§ 3, 4; 2005, No. 249, § 1; 2005, No. 1816, § 2; 2007, No. 42, § 2; 2011, No. 796, § 1.

Amendments. The 2007 amendment

added (a)(3); in (b)(1) and (2), substituted “with the approval of” for “provided that” and deleted “approves its application for the full service branch” at the end; deleted “mobile” preceding “banking” in (c)(2); substituted “a notice” for “an application”

in (d)(1); in (d)(2), substituted “three hundred dollars (\$300)” for “one thousand dollars (\$1,000),” substituted “five hundred dollars (\$500) established” for “two thousand five hundred dollars (\$2,500), as set,” and substituted “notice” for “application” at the end; rewrote (d)(3); in (d)(4), substituted “the” for “such a” and substi-

tuted “consistent with the standards contained in § 23-48-703(a)” for “economically feasible or will not serve the public convenience and necessity” at the end; and substituted “notice” for “application” in the introductory language of (d)(5)(A).
The 2011 amendment rewrote (b).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Regulated Industries, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 595.

23-48-703. Establishment of full-service branch — Standards and procedure.

(a) The Bank Commissioner shall have the authority to approve the application of a state bank to establish a full-service branch if the commissioner determines that the establishment of the full-service branch is consistent with:

- (1) Maintaining a sound banking system;
- (2) Encouraging the bank to help meet the credit needs of the community;
- (3) Relying on the marketplace as generally the best regulator of economic activity; and
- (4) Encouraging healthy competition to promote efficiency and better service to customers.

(b) The sponsor of a full-service branch application may file an application with the commissioner by:

- (1) Paying a filing fee established by State Bank Department regulation of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500); and
- (2) Not less than thirty (30) days prior to filing the application, publishing notice of the application one (1) time per week for four (4) consecutive weeks in a newspaper of statewide circulation.

(c) The commissioner:

- (1) May establish by regulation an expedited application process and procedure for the approval of a healthy bank full-service branch application; and

- (2) Shall approve a healthy bank full-service branch application unless the commissioner determines that approving the application is not consistent with the standards provided in subsection (a) of this section.

(d)(1) The commissioner shall give notice of the filing of an application under subsection (b) or subsection (c) of this section to all Arkansas state-chartered banks with a bank or a full service branch currently open and operating within the market area of the proposed new branch.

- (2) The procedure for giving notice and the parameters of the market area shall be established by State Bank Department regulation.

(e)(1) A written protest to a full-service branch application may be filed with the commissioner within fifteen (15) days of the filing of the application.

(2) The protest shall include:

(A) A detailed explanation of the protesting party's reasons why the commissioner should deny the application; and

(B) A filing fee established by department regulation of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500).

(f) The commissioner may conduct an adjudicatory or administrative hearing on a full-service branch application.

(g)(1) The commissioner shall issue an order accepting or rejecting a full-service branch application within a reasonable period of time following the expiration of the fifteen-day protest period under subdivision (d)(1) of this section.

(2) The order shall include specific findings of fact and conclusions of law concerning whether the establishment of the full-service branch is consistent with the standards provided in subsection (a) of this section.

(h) Within thirty (30) days after the commissioner issues an order accepting or rejecting a full-service branch application, an applicant or a party that filed a protest to the full-service branch application may appeal the commissioner's order to the circuit court of the county where the full-service branch will be established.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 7; 2007, No. 42, § 3. substituted "Standards and procedure" for "offices — Procedure" at the end of the

Amendments. The 2007 amendment section heading; and rewrote the section.

23-48-704. Preexisting facilities.

Any bank may, at its option, operate any branch office, teller's window, or other banking facility which is separate from the main office of the bank and in operation on June 30, 1988, as a full-service branch or a customer-bank communications terminal.

History. Acts 1997, No. 89, § 1.

23-48-705. Notice of termination of full-service branch.

When a full-service branch has once been established under any provision of this subchapter or any prior act, the operation thereof shall not be discontinued or the facility closed unless ninety (90) days' prior notice of intention to terminate the operation is given in writing to the supervisory banking authority.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 8 — CUSTOMER-BANK COMMUNICATION TERMINALS

SECTION.

- 23-48-801. Definitions.
- 23-48-802. Location of customer-bank communication terminals.
- 23-48-803. Notice of establishment of terminal.
- 23-48-804. Out-of-state banks.
- 23-48-805. Point-of-sale terminals not subject to regulation by Bank Commissioner.
- 23-48-806. Interconnected terminals.

SECTION.

- 23-48-807. Persons attending terminals — Verification of transactions.
- 23-48-808. Privacy of account information.
- 23-48-809. Approval for expanded powers of state banks.
- 23-48-810. Sharing of communication terminals.

23-48-801. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) “Customer-bank communication terminal”, or “CBCT”, means any electronic device or facility, other than a point-of-sale terminal, together with all associated equipment, structures, and systems, through or by means of which a customer and a bank may engage in any banking transaction, whether transmitted to the banking institution instantaneously or otherwise. This definition specifically includes automatic teller machines.

(B) Banking transactions include, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to an authorized line of credit, receiving payments payable at the bank or otherwise, and transmitting instructions to receive, transfer, or pay funds for a customer’s benefit.

(C) However, nothing in this subdivision (1) shall be deemed to apply to devices used by banks to effect transactions of any nature with other banks;

(2) “Point-of-sale terminal” means electronic or mechanical equipment located in nonbank business outlets to record or execute, directly with a bank, transactions occurring as a result of the sale of goods or services, provided the equipment neither dispenses cash nor accepts deposits. For purposes of this definition, the crediting of an account for merchandise returned or for services previously provided shall not be considered as an acceptance of a deposit; and

(3) “Supervisory banking authority” means the Bank Commissioner and the State Banking Board for state banks and the United States Comptroller of the Currency for national banks.

History. Acts 1997, No. 89, § 1.

23-48-802. Location of customer-bank communication terminals.

A bank, individually or jointly with one (1) or more other banks in the state, may establish, maintain, and use one (1) or more customer-bank

communication terminals anywhere in this state and in any location in any one (1) or more other states if permitted by the applicable law of the other state.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 17.

23-48-803. Notice of establishment of terminal.

(a) As to any and each customer-bank communication terminal which a state bank proposes to establish, the state bank shall notify the Bank Commissioner of the establishment and location of the terminal.

(b) No notice need be given for any device or machine which:

(1) Is used solely to verify a customer's credit for purposes of check cashing or of a credit card transaction; or

(2) Is a part of a bank's authorized main office or branch.

(c) No hearing or permit shall be required to establish or use a customer-bank communication terminal.

History. Acts 1997, No. 89, § 1; 1999, No. 113, § 8.

23-48-804. Out-of-state banks.

(a) Any out-of-state bank may establish, maintain, and operate a customer-bank communication terminal anywhere in this state.

(b)(1) Out-of-state state-chartered banks other than registered out-of-state banks shall file the notice set forth in § 23-48-803 with the Bank Commissioner.

(2) Registered out-of-state banks shall satisfy all filing requirements under the regulations of their home state regulator concerning the establishment, maintenance, and operations of out-of-state customer-bank communication terminals.

(c) Nothing in this section shall limit, restrict, or prohibit any Federal Reserve Bank or branch thereof from operating any electronic funds transfer system in this state.

History. Acts 1997, No. 89, § 1; 1997, No. 408, § 18.

23-48-805. Point-of-sale terminals not subject to regulation by Bank Commissioner.

A point-of-sale terminal, as defined in this subchapter, shall not be subject to the regulation or supervision of the Bank Commissioner.

History. Acts 1997, No. 89, § 1.

23-48-806. Interconnected terminals.

(a) In order to permit the transaction of any banking function authorized under this subchapter between a bank and its customers, any bank, pursuant to the provisions of this subchapter, may be interconnected with:

(1) One (1) or more customer-bank communication terminals, including out-of-state customer-bank communication terminals, established by one (1) or more other banks; and

(2) One (1) or more electronic funds transfer systems or computer systems, regardless of the location of the banks, customer-bank communication terminals, electronic funds transfer systems, or computer systems.

(b) However, nothing in this section shall be construed as permitting any out-of-state bank, other than a registered out-of-state bank, to conduct banking business in this state unless expressly permitted by the Arkansas Banking Code of 1997.

History. Acts 1997, No. 89, § 1; 1997, Banking Code of 1997 referred to in this No. 408, § 19. section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas title.

23-48-807. Persons attending terminals — Verification of transactions.

(a)(1) Except for customer-bank communication terminals located on the premises of the main office or a branch of a bank, a customer-bank communication terminal shall be unattended or attended by persons not employed by the bank utilizing the customer-bank communication terminal.

(2) However, employees or agents of the bank or its agents may install, maintain, repair, and service the terminal and, for a reasonable period of time after the opening of the terminal, may provide an employee to instruct and assist customers in the operation of the terminal.

(b) All transactions initiated through a customer-bank communication terminal shall be subject to verification by the bank, either by direct wire transmission or otherwise.

History. Acts 1997, No. 89, § 1.

23-48-808. Privacy of account information.

A bank using customer-bank communication terminals shall establish and maintain reasonable safeguards designed to protect the privacy and confidentiality of account information.

History. Acts 1997, No. 89, § 1.

23-48-809. Approval for expanded powers of state banks.

At such time as national banks having their main offices in this state are permitted to establish and use customer-bank communication terminals in places or for transactions not permitted under this subchapter, all state banks shall have the powers permitted national banks with respect to the establishment and use of customer-bank communication terminals, provided that the Bank Commissioner authorizes such use.

History. Acts 1997, No. 89, § 1.

23-48-810. Sharing of communication terminals.

(a)(1) An agreement to share a customer-bank communication terminal, as defined by § 23-48-801, shall not prohibit, limit, or restrict the right of a bank from charging a customer-bank communication terminal usage fee.

(2) The usage fee shall not exceed two dollars (\$2.00) or two percent (2%) of the gross amount of the transaction, whichever is less, and may only be imposed if imposition of the fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the usage fee.

(b)(1) For purposes of this section, “usage fee” is a fee charged by a customer-bank communication terminal owner on transactions by a holder of a foreign bank card.

(2) For purposes of this section, a “foreign bank card” is a card eligible for use in a customer-bank communication terminal, which card is not issued by the customer-bank communication terminal owner.

History. Acts 1997, No. 89, § 1.

SUBCHAPTER 9 — INTERSTATE BANK MERGERS AND BRANCHING**SECTION.**

23-48-901. [Repealed.]

23-48-902. Authority of state banks to establish interstate branches by merger.

23-48-903. Interstate merger transactions and branching permitted.

23-48-904. [Repealed.]

23-48-905. Notice and filing requirements.

SECTION.

23-48-906. Powers — Additional branches.

23-48-907. Examinations — Periodic reports — Cooperative agreements — Fees.

23-48-908. Enforcement.

23-48-909. Regulations.

23-48-910. Notice of subsequent merger.

23-48-911. Severability.

Effective Dates. Acts 2011, No. 796, § 6: Mar. 30, 2011. Emergency clause provided: “It is found and determined by the General Assembly that federal law allows out-of-state bank holding companies to

acquire control of Arkansas banks; that the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 preempts all state laws prohibiting branching by all banks across state lines;

and that this act is necessary to amend and repeal certain provisions within the Arkansas Banking Code pertaining to the authority of Arkansas banks to establish branch bank facilities outside the State of Arkansas and out-of-state banks to establish branch facilities within the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the

public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-901. [Repealed.]

Publisher's Notes. This section, concerning definitions, was repealed by Acts

2011, No. 796, § 2. The section was derived from Acts 1997, No. 408, § 20.

23-48-902. Authority of state banks to establish interstate branches by merger.

(a) With the prior approval of the State Banking Board and the Bank Commissioner, a state bank may establish, maintain, and operate one (1) or more branches in one (1) or more states other than Arkansas pursuant to an interstate merger transaction in which the state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant state bank shall file an application on a form prescribed by the commissioner and pay the fee prescribed by § 23-46-404. The applicant shall also comply with the applicable provisions of § 23-48-501 et seq.

(c)(1) If the board and commissioner, after a hearing, find that:

(A) The proposed merger provides adequate capital structure;

(B) The terms of the merger agreement are fair;

(C) The merger is not contrary to the public interest;

(D) The proposed merger adequately provides for dissenters' rights; and

(E) The requirements of all applicable state and federal laws have been complied with,

then the board and the commissioner shall approve the interstate merger transaction and the operation of branches outside of Arkansas by the state bank.

(2) An interstate merger transaction may be consummated only after the applicant has received the written approval of the board and the commissioner.

History. Acts 1997, No. 408, § 20.

23-48-903. Interstate merger transactions and branching permitted.

One (1) or more Arkansas banks, provided no such Arkansas bank has a de novo charter, may enter into an interstate merger transaction with one (1) or more out-of-state banks under this subchapter in which the out-of-state bank is the resulting bank, and the out-of-state bank may thereafter maintain and operate the branches in Arkansas of any Arkansas bank that was a party to the interstate merger transaction, provided that the conditions and filing requirements of § 23-48-1001 et seq. are met.

History. Acts 1997, No. 408, § 20.

23-48-904. [Repealed.]

Publisher's Notes. This section, concerning de novo interstate branches or acquisition of interstate branches prohibited, was repealed by Acts 2011, No. 796, § 3. The section was derived from Acts 1997, No. 408, § 20.

23-48-905. Notice and filing requirements.

(a) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a state bank shall notify the Bank Commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner.

(b) Any state bank which is a party to the interstate merger transaction shall comply with § 23-48-501 et seq. and with all other applicable state and federal laws.

(c) Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall comply with applicable requirements of § 23-48-1001 et seq.

History. Acts 1997, No. 408, § 20.

23-48-906. Powers — Additional branches.

(a) An out-of-state state-chartered bank which establishes and maintains one (1) or more branches in Arkansas under this subchapter may conduct any activities at such branch or branches which are authorized under the laws of Arkansas for state banks.

(b) A state bank may conduct any activities at any branch outside Arkansas which are permissible for a bank chartered by the host state in which the branch is located, provided that the Bank Commissioner may prohibit any state bank from engaging in any activity not expressly allowed by the Arkansas Banking Code of 1997 if the commissioner determines, by order or regulation, that the involvement of out-of-state

branches of state banks in such activities would threaten the safety or soundness of state banks.

History. Acts 1997, No. 408, § 20; section is codified as chapters 45-50 of this 2011, No. 796, § 4. title.

Publisher's Notes. The Arkansas **Amendments.** The 2011 amendment Banking Code of 1997 referred to in this deleted (c).

23-48-907. Examinations — Periodic reports — Cooperative agreements — Fees.

(a) To the extent consistent with subsection (c) of this section, the Bank Commissioner may make such examinations of any branch established and maintained in Arkansas pursuant to this subchapter by an out-of-state state-chartered bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code of 1997 shall apply to such examinations.

(b)(1) The commissioner may prescribe requirements for periodic reports regarding any registered out-of-state bank that operates a branch in Arkansas. The required reports shall be provided by the bank.

(2) Any reporting requirements prescribed by the commissioner under this subsection shall be consistent with the reporting requirements applicable to state banks and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this subchapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Arkansas of an out-of-state state-chartered bank, or any branch of a state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or an out-of-state state-chartered bank operating a branch in this state pursuant to this subchapter to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under § 19-11-232.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Arkansas of an out-of-state state-chartered bank or any branch of a state bank in any host state,

provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this subchapter or to ensure compliance with the laws of this state, but provided further, that, in the case of an out-of-state state-chartered bank, the commissioner shall recognize the exclusive authority of the home-state regulator over corporate governance matters and the primary responsibility of the home-state regulator with respect to safety and soundness matters.

(f)(1) Each out-of-state state-chartered bank that maintains one (1) or more branches in Arkansas may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the Arkansas Banking Code of 1997 and regulations of the commissioner.

(2) The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between the parties and the commissioner.

History. Acts 1997, No. 408, § 20.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas title.

Banking Code of 1997 referred to in this

23-48-908. Enforcement.

If the Bank Commissioner determines that a branch maintained by an out-of-state state-chartered bank in Arkansas is being operated in violation of any provision of the laws of Arkansas, or that the branch is being operated in an unsafe or unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a state bank, provided, that the commissioner shall promptly give notice to the home-state regulator of each enforcement action taken against an out-of-state state-chartered bank and, to the extent practicable, shall consult and cooperate with the home-state regulator in pursuing and resolving the enforcement action.

History. Acts 1997, No. 408, § 20.

23-48-909. Regulations.

The Bank Commissioner, with the approval of the State Banking Board, may promulgate regulations that he or she determines to be necessary or appropriate in order to implement the provisions of this subchapter.

History. Acts 1997, No. 408, § 20.

23-48-910. Notice of subsequent merger.

Each registered out-of-state bank that has established and maintains a branch in this state pursuant to this subchapter shall give at least thirty (30) days’ prior written notice or, in the case of an emergency transaction, shorter notice that is consistent with applicable state or federal law, to the Bank Commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, which requires that an application be filed pursuant to the Change in Bank Control Act of 1978, 12 U.S.C. § 1817(j), or the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et seq., or any successor statutes thereto.

History. Acts 1997, No. 408, § 20.

23-48-911. Severability.

If any provision of this subchapter or the application of any such provision is found by any court of competent jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions hereof shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

History. Acts 1997, No. 408, § 20.

SUBCHAPTER 10 — REGISTRATION OF OUT-OF-STATE BANKS

SECTION.	SECTION.
23-48-1001. Application for certificate of authority.	23-48-1006. Resignation of registered agent of out-of-state bank.
23-48-1002. Amended certificate of authority.	23-48-1007. Service on out-of-state banks.
23-48-1003. Effect of certificate of authority.	23-48-1008. Withdrawal of out-of-state bank.
23-48-1004. Registered office and registered agent of out-of-state bank.	23-48-1009. Grounds for revocation.
23-48-1005. Change of registered office or registered agent of out-of-state bank.	23-48-1010. Procedure for and effect of revocation.
	23-48-1011. Appeal from revocation.

Effective Dates. Acts 2011, No. 796, § 6: Mar. 30, 2011. Emergency clause provided: “It is found and determined by the General Assembly that federal law allows out-of-state bank holding companies to acquire control of Arkansas banks; that the Federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 preempts all state laws prohibiting

branching by all banks across state lines; and that this act is necessary to amend and repeal certain provisions within the Arkansas Banking Code pertaining to the authority of Arkansas banks to establish branch bank facilities outside the State of Arkansas and out-of-state banks to establish branch facilities within the State of Arkansas. Therefore, an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Gov-

ernor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-48-1001. Application for certificate of authority.

(a) An out-of-state bank that desires to operate a branch location in the State of Arkansas, whether initial entry into the state is by an interstate merger transaction or establishment of a full-service branch, shall apply for a certificate of authority to transact banking business in this state. An applicant shall deliver an application to the Bank Commissioner for filing by the consummation of an interstate merger transaction or before establishment of a full-service branch. The application shall state:

- (1) The name of the bank;
- (2) The name of the state or country under whose law it is chartered;
- (3) Its date of formation and period of duration;
- (4) The street address of its principal office;
- (5) The address of its registered office in this state and the name of its registered agent at that office; and
- (6) The number and par value, if any, of shares of the bank's capital stock owned or to be owned by residents of this state.

(b) The bank shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the bank supervisory agency which chartered the bank or other official having custody of the corporate records of banking institutions in the state or country under whose law it is chartered.

History. Acts 1997, No. 408, § 20; 2011, No. 796, § 5.

Amendments. The 2011 amendment rewrote the introductory language of (a).

23-48-1002. Amended certificate of authority.

(a) A registered out-of-state bank shall apply for an amended certificate of authority from the Bank Commissioner if it changes:

- (1) The name of the bank;
- (2) The period of its duration; or
- (3) The state or country under which it is chartered.

(b) The requirements of § 23-48-1001 for applying for an original certificate of authority shall also apply to applications for obtaining an amended certificate of authority hereunder.

History. Acts 1997, No. 408, § 20.

23-48-1003. Effect of certificate of authority.

(a) A certificate of authority authorizes the out-of-state bank to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) An out-of-state bank with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a state bank of like character.

(c) This chapter does not authorize this state to regulate corporate governance matters of an out-of-state bank authorized to transact business in this state.

History. Acts 1997, No. 408, § 20.

23-48-1004. Registered office and registered agent of out-of-state bank.

Each registered out-of-state bank must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this state and whose business office is identical with the registered office;

(B) A state bank, domestic corporation, or not-for-profit corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

History. Acts 1997, No. 408, § 20.

23-48-1005. Change of registered office or registered agent of out-of-state bank.

(a) A registered out-of-state bank may change its registered office or registered agent by delivering to the Bank Commissioner for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any out-of-state bank for which he or she is the registered agent by notifying the bank in writing of the change and signing, either manually or in facsimile, and delivering to the commissioner for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the bank has been notified of the change.

History. Acts 1997, No. 408, § 20.

23-48-1006. Resignation of registered agent of out-of-state bank.

(a) The registered agent of an out-of-state bank may resign his or her agency appointment by signing and delivering to the Bank Commissioner for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the commissioner shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The commissioner shall mail the other copy to the out-of-state bank at its principal office address shown in its most recent annual franchise tax report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

History. Acts 1997, No. 408, § 20.

23-48-1007. Service on out-of-state banks.

(a) The registered agent of a registered out-of-state bank is the bank's agent for service of process, notice, or demand required or permitted by law to be served on the out-of-state bank.

(b) A registered out-of-state bank may be served by registered or certified mail, return receipt requested, addressed to the secretary or cashier of the out-of-state bank at its principal office shown in its application for a certificate of authority or in its most recent annual franchise tax report if the out-of-state bank:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under § 23-48-1008; or

(3) Has had its certificate of authority revoked under § 23-48-1010.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the out-of-state bank receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the out-of-state bank; or

(3) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a registered out-of-state bank.

History. Acts 1997, No. 408, § 20.

23-48-1008. Withdrawal of out-of-state bank.

(a) A registered out-of-state bank may not withdraw from this state until it obtains a certificate of withdrawal from the Bank Commissioner.

(b) A registered out-of-state bank may apply for a certificate of withdrawal by delivering an application to the commissioner for filing. The application must set forth:

(1) The name of the out-of-state bank and the name of the state or country under whose law it is chartered;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the commissioner as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the commissioner may mail a copy of any process served on him or her under subdivision (b)(3) of this section; and

(5) A commitment to notify the commissioner in the future of any change in its mailing address for a period of time to be determined by the commissioner.

(c) After the withdrawal of the bank is effective, service of process on the commissioner under this section is service on the out-of-state bank. Upon receipt of process, the commissioner shall mail a copy of the process to the out-of-state bank at the mailing address set forth under subsection (b) of this section.

History. Acts 1997, No. 408, § 20.

23-48-1009. Grounds for revocation.

The Bank Commissioner may commence a proceeding under § 23-48-1010 to revoke the certificate of authority of a registered out-of-state bank if:

(1) The out-of-state bank does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(2) The out-of-state bank does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) The out-of-state bank is without a registered agent or registered office in this state for sixty (60) days or more;

(4) The out-of-state bank does not inform the commissioner under § 23-48-1005 or § 23-48-1006 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;

(5) The out-of-state bank or an officer, director, or employee thereof is found to be violating federal banking laws or regulations, violating the banking laws of this state or department regulations, violating any regulatory agreement, or jeopardizing the safety and soundness of the out-of-state bank;

(6) An incorporator, director, officer, or agent of the out-of-state bank signed a document he or she knew was false in any material respect with intent that the document be delivered to the commissioner for filing; or

(7) The commissioner receives a duly authenticated certificate from the bank supervisory agency or other official having custody of the corporate records of banking institutions in the state or country under whose law the out-of-state bank is chartered stating that it has been dissolved or disappeared as the result of a merger.

History. Acts 1997, No. 408, § 20.

23-48-1010. Procedure for and effect of revocation.

(a) If the Bank Commissioner determines that one (1) or more grounds exist under § 23-48-1009 for revocation of a certificate of authority, he or she shall serve the out-of-state bank with written notice of his or her determination under § 23-48-1007.

(b)(1) If an out-of-state bank does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the commissioner that each ground determined by the commissioner does not exist within thirty (30) days after service of the notice is perfected under § 23-48-1007, the commissioner may revoke the out-of-state bank's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date.

(2) The commissioner shall file the original of the certificate and serve a copy on the out-of-state bank under § 23-48-1007.

(c) The authority of an out-of-state bank to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d)(1) The commissioner's revocation of an out-of-state bank's certificate of authority appoints the commissioner the out-of-state bank's agent for service of process in any proceeding based on a cause of action which arose during the time the out-of-state bank was authorized to transact business in this state. Service of process on the commissioner under this subsection is service on the out-of-state bank.

(2) Upon receipt of process, the commissioner shall mail a copy of the process to the secretary or cashier of the out-of-state bank at its principal office shown in its most recent annual franchise tax report or in any subsequent communication received from the bank stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of an out-of-state bank’s certificate of authority does not terminate the authority of the registered agent of the bank.

History. Acts 1997, No. 408, § 20.

23-48-1011. Appeal from revocation.

(a)(1) An out-of-state bank may appeal the Bank Commissioner’s revocation of its certificate of authority to the Pulaski County Circuit Court within thirty (30) days after service of the certificate of revocation is perfected under § 23-48-1007.

(2) The out-of-state bank appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the commissioner’s certificate of revocation.

(b) The court may order the commissioner to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court’s final decision may be appealed as in other civil proceedings.

History. Acts 1997, No. 408, § 20.

CHAPTER 49

DISSOLUTION AND LIQUIDATION

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23-49-119. Voluntary liquidation.

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23-49-120. Voluntarily placing an institution in possession of commissioner.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on June 1, 1997 and that this act should become effective prior to the effective date

of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

23-49-101. Definitions.

As used in this chapter:

(1) "Circuit court" means the court with which the State Bank Department has filed the notice of possession under this chapter. The circuit court will make a determination for sale of assets only and not a determination of whether or not to take charge of an institution under the Bank Commissioner's supervision;

(2) "Federal deposit insurance agency" means an agency or instrumentality of the United States that insures to any extent the deposits of a depository institution, including the Federal Deposit Insurance Corporation;

(3) "Insolvent institution" means an institution that:

(A) Is, in the opinion of the commissioner, incapable of or unlikely to meet the demands of creditors or depositors on a timely basis;

(B) Has liabilities in excess of the total value of its assets as determined by the commissioner; or

(C) Has been advised by the Federal Deposit Insurance Corporation of the Federal Deposit Insurance Corporation's intention to withdraw deposit insurance coverage; and

(4) "Institution" means a state bank, state trust company, or subsidiary trust company.

History. Acts 1997, No. 89, § 1; 1997, No. 940, § 113.

23-49-102. Department taking possession — Procedure.

(a) In addition to the powers conferred upon the Bank Commissioner and the State Bank Department, the commissioner may take possession of the business and property of any institution which the commissioner supervises whenever it appears to the commissioner that the institution:

(1) Is insolvent or in imminent danger of insolvency;

- (2) Is in an unsafe or unsound condition;
- (3) Has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;
- (4) Has concealed or refused to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate federal financial institution regulatory agency or of the department;
- (5) Has substantially dissipated assets or earnings due to:
 - (A) Any violation of any law or regulation; or
 - (B) An unsafe or unsound practice;
- (6) Has requested through its board of directors that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons;
- (7) Has an impairment of its capital as is currently required to be maintained by the department;
- (8) Has neglected or refused, for a period of at least thirty (30) days, to comply with the terms of a final order of the department or final order of a federal financial institution's regulatory agency essential to preserve the solvency of the institution; or

(9) Has failed to pay the fees charged by the department under § 23-46-509 after due notice of the amount of the fee has been given.

(b) Whenever it appears to the department that any one (1) or more of the conditions in subsection (a) of this section exists as to any institution, the department shall cause a certified notice to be served on the president or other executive officer actively in charge of the institution and demand possession of the business, property, and records of the institution from the officer citing the reasons for such a demand from subsection (a) of this section. The institution shall immediately surrender the possession to the commissioner.

History. Acts 1997, No. 89, § 1.

23-49-103. Injunction against commissioner.

(a) Whenever any institution of whose business, property, and records the Bank Commissioner has taken possession deems itself aggrieved thereby, it may, at any time within ten (10) days after taking possession, apply to the circuit court to enjoin further proceedings.

(b) After notifying the commissioner to show cause why further proceedings should not be enjoined and after hearing the allegations and proof of the parties and determining the facts, the court may, upon the merits, dismiss the application or enjoin the commissioner from further proceedings and direct him or her to surrender the business, property, and records to the institution.

History. Acts 1997, No. 89, § 1.

23-49-104. When possession terminates.

When the Bank Commissioner has taken possession of the business and property of an institution under the provisions of § 23-49-102, the commissioner shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this chapter, unless the institution has undertaken the voluntary liquidation of its affairs under this chapter or the Federal Deposit Insurance Corporation has been appointed receiver.

History. Acts 1997, No. 89, § 1.

23-49-105. Notice of possession.

(a) Immediately upon taking possession of the business and property of any institution under § 23-49-102, the Bank Commissioner shall give notice by:

(1) Causing the notice to be served upon the president or other executive officer actively in charge of the business of the institution;

(2) Posting the notice at the main entrance at each office of the institution;

(3) Filing the notice in the office of the circuit court in the county where the main office of the institution is located;

(4) Causing the notice to be mailed to all correspondent banks of the institution. However, if the commissioner fails to provide the notice, the commissioner shall incur no liability thereon; and

(5) Causing the notice to be published by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation.

(b) Upon the filing of the notice under subsection (a) of this section, the clerk shall:

(1) Note the filing of the notice upon the records of the court; and

(2) Enter the cause as an action upon the dockets of the court under the name and style of "In the matter of the liquidation of ____" (inserting the name of the institution).

(c) The court shall not have authority to review the action of the commissioner in taking possession of the institution's business, property, and records. However, the court may hear and determine all issues and matters pertaining to or connected with the liquidation of the institution, including:

(1) The sale of assets or assumption of liabilities of the institution; and

(2) The amount of the compensation and necessary expenses of any special representative, assistant, accountant, agent, or attorney employed by the commissioner, or the receiver appointed by the commissioner, as set forth in this chapter.

(d) All entries, orders, judgments, and decrees of the court in connection with the liquidation proceedings shall be filed and entered of record in the cause of action.

(e)(1) The rights and liabilities of an institution and of its creditors, depositors, shareholders, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the delivery of the notice of possession to the president or other executive officer actively in charge of the business of the institution.

(2) In the case of mutual debts or mutual credits of equal priority between the institution and another person, the credits and debts shall be set off and the balance only shall be allowed or paid.

(3) The right to setoff shall be determined as of the date of delivery of the notice of possession of the institution to the president or other executive officer actively in charge of the business of the institution.

History. Acts 1997, No. 89, § 1.

23-49-106. Appointment of receiver — Restrictions on proceedings, liens, or credits.

(a)(1) The Bank Commissioner may appoint the appropriate federal deposit insurance agency as the receiver of the closed institution. If the federal deposit insurance agency accepts the appointment, the commissioner shall file notice with the court of the appointment.

(2) If the Federal Deposit Insurance Corporation accepts appointment as receiver, it shall not be required to post any bond.

(b)(1) Upon appointment as receiver, title to all assets of the institution vests in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement.

(2) If no other receiver is appointed as provided in this chapter, the commissioner shall act as receiver and have all of the powers and duties of a receiver as provided in this chapter.

(c) Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of any institution is vested in the receiver appointed under this section, and no other receiver, assignee, trustee, or liquidating agent shall be appointed by any court or any other person.

(d) After the commissioner has taken possession of the business and property of any institution, no suit, action, or other proceeding at law or in equity shall be commenced or prosecuted against the institution upon any debt, obligation, claim, or demand. All such claims may be brought against the receiver.

(e)(1) No person holding any of the property or credits of the institution shall have any lien or charge against the property or credits for any payment, advance, or clearance made after the commissioner has taken possession.

(2) A lien shall not attach to any of the assets or property of the institution by reason of the entry of any judgment recovered against the institution after the commissioner has taken possession of its business and property.

History. Acts 1997, No. 89, § 1.

23-49-107. Powers of receiver.

The receiver of a closed institution may do the following:

- (1) Take possession of all books, records, and assets of the institution;
- (2) Collect all debts, claims, and judgments belonging to the institution and do such other acts as are necessary to preserve and liquidate its assets;
- (3) Execute in the name of the institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver;
- (4) Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the institution;
- (5) Exercise any and all existing fiduciary functions of the institution as of the date of appointment as receiver;
- (6) Borrow money as necessary in the liquidation of the institution and secure the borrowings by the pledge or mortgage of assets. The repayment of money borrowed under this subsection and interest thereon shall be considered an expense of administration under § 23-49-111;
- (7) Abandon or convey title to any holder of a mortgage, deed of trust, security interest, or lien against property in which the institution has an interest whenever the receiver determines that to continue to claim the interest is burdensome and of no advantage to the institution, its depositors, creditors, or shareholders;
- (8) Repudiate any leases or executory contracts to which the institution is a party in accordance with § 23-49-112; and
- (9) Subject to the approval of the court:
 - (A) Sell any and all real and personal property to compromise any debt, claim, or judgment due from the institution and discontinue any action or other proceedings pending;
 - (B) Pay off all mortgages, deeds of trust, security agreements, and liens upon any real or personal property belonging to the institution and purchase at judicial sale or at sale authorized by court order, any real or personal property in order to protect the institution's equity in that property; and
 - (C) Sell in bulk the assets and liabilities of the institution.

History. Acts 1997, No. 89, § 1.

23-49-108. Sale of assets — Assumption of deposit liabilities by new institution.

(a) The receiver may, with ex parte approval of the circuit court, sell all or any part of the institution's assets to one (1) or more other state or federally chartered depository institution or to a federal deposit insurance agency in its corporate capacity.

(b) The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered

depository institution, assigning any part or all of the assets of the institution as security for the loan.

History. Acts 1997, No. 89, § 1.

23-49-109. Presentation of claims — Notice of claims procedure — Rejection of claims — Statute of limitations.

(a) All parties having claims against the closed institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the Bank Commissioner has taken possession.

(b) The receiver shall cause notice of the claims procedures prescribed by this section to be:

(1) Published once a month for three (3) consecutive months in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation; and

(2) Mailed to each person whose name appears as a creditor upon books of the institution at the person's last address of record.

(c)(1) Within one hundred eighty (180) days following receipt of the claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed.

(2) Any claimant whose claim has been rejected by the receiver may petition the circuit court for a hearing on the claim within sixty (60) days from the date the claim was rejected.

(d) The period described in subsection (a) of this section may be extended by written agreement between the claimant and the receiver.

(e)(1) The claim of any party against the closed institution shall be disallowed, other than any portion of the claim which was allowed by the receiver, as of the end of the sixty-day period described in subsection (c) of this section, if the party having the claim fails to:

(A) Request an administrative review of any claim by the receiver in accordance with proper procedure; or

(B) File suit on the claim, or continue an action commenced before the appointment of the receiver, before the end of the sixty-day period.

(2) The disallowance shall be final, and the claimant shall have no further rights or remedies with respect to the claim.

History. Acts 1997, No. 89, § 1.

23-49-110. Claims filed after 180-day claim period.

Any claims filed after the one-hundred-eighty-day claim period prescribed by § 23-49-109 and subsequently accepted by the receiver or allowed by the circuit court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed.

History. Acts 1997, No. 89, § 1.

23-49-111. Payment of claims.

(a) All claims against the institution's estate, proved to the receiver's satisfaction or approved by the circuit court, shall be paid in the following order:

- (1) Administration expenses;
- (2) Claims given priority under other provisions of state or federal law;
- (3) Deposit obligations;
- (4) Other general liabilities;
- (5) Debt subordinated to the claims of depositors and general creditors; and
- (6) Equity capital securities.

(b) Administrative expenses shall include:

- (1) Court costs;
- (2) Compensation of each regular officer or employee of the receiver for the time actually devoted by the officer or employee to the liquidation of the institution at an amount not to exceed the compensation paid to the officer or employee for the performance of his or her regular duties;
- (3) Actual expenses of each regular officer and employee necessarily incurred in the performance of his or her duties;
- (4) Compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver; and
- (5) If the Bank Commissioner is acting as receiver, such reasonable general overhead expenses as may be incurred by the commissioner in the liquidation of the affairs of the institution, which shall be ascertained, determined, and fixed by the commissioner.

(c) Interest on any claims shall not be paid until all claims within the same class have received the full principal amount of claim.

History. Acts 1997, No. 89, § 1.

23-49-112. Rejection of contracts and leases.

(a) Within one hundred eighty (180) days after the date that the Bank Commissioner has taken possession, the receiver may, at his or her election, reject:

- (1) Any executory contracts to which the closed institution is a party without any further liability to the closed institution or the receiver; and
- (2) Any obligation of the institution as a lessee of real or personal property.

(b) The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination.

History. Acts 1997, No. 89, § 1.

23-49-113. Subrogation of federal deposit insurance agency to rights of depositors.

Whenever a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed institution, the federal deposit insurance agency, whether or not it acts as receiver, shall be subrogated by operation of law to all rights of depositors against the closed institution relating to claims for deposits so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed institutions.

History. Acts 1997, No. 89, § 1.

23-49-114. Appointment of successor to fiduciary and representative proceedings.

(a)(1) The receiver, with the approval of the circuit court, may appoint one (1) or more successors to any or all of the rights, obligations, assets, deposits, agreements, and trusts held by the closed institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities.

(2) The approval may be obtained in connection with the proceedings authorized under § 23-49-108.

(3)(A) A successor's duties and obligations begin upon appointment to the same extent binding upon the closed institution and as though the successor had originally assumed the duties and obligations.

(B) Specifically, a successor shall be appointed to administer trusteeships, administrations, executorships, guardianships, agencies, and other fiduciary or representative proceedings to which the closed institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

(b) This section shall not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.

(c) Within thirty (30) days after appointment, a successor shall give written notice, insofar as practical, that the successor has been appointed in accordance with applicable law to all interested parties named in:

- (1) The books and records of the closed institution; and
- (2) Trust documents held by it.

History. Acts 1997, No. 89, § 1.

23-49-115. Notice concerning safekeeping and safe-deposit boxes.

(a)(1) The receiver shall cause notice to be mailed to the last address of record to the owners of any personal property in the possession of or

held by a closed institution for safekeeping, and to all lessees of safe-deposit boxes.

(2) The notice shall require the intended recipients to appear and assert their claims to the property within sixty (60) days from the date of the notice.

(b) Subject to approval of the circuit court, the receiver shall make such agreements or arrangements as may be necessary for the disposition of property held by the closed institution for safekeeping and the contents of safe-deposit boxes, and for the termination of any leases or other contracts relating to the property or contents.

History. Acts 1997, No. 89, § 1.

23-49-116. Actions for enforcement of rights, demands, or claims vested in an institution or its shareholders or creditors.

Notwithstanding any other provision of state law, the receiver may, within five (5) years from the date of closing of the institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the institution.

History. Acts 1997, No. 89, § 1.

23-49-117. Contents of articles of dissolution.

When the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

- (1) The name of the institution;
- (2) The place where its main office was located;
- (3) The names and addresses of the directors and officers of the institution at the time the liquidation proceedings were begun;
- (4) A brief summary of the aggregate amount of general claims finally allowed against the institution, the order in which the claims were paid, and the aggregate amount of all other claims against the institution. A statement of the aggregate payments made on each of the groups of claims must be provided, referencing the orders of the receiver or the circuit court authorizing those payments and the current reports documenting such payments; and
- (5) A brief summary of the aggregate amount of payments made to the shareholders of the institution, whether of money or other property, and a reference to the orders of the receiver or the circuit court authorizing the payments and to the current reports wherein documentation of the payments is made.

History. Acts 1997, No. 89, § 1.

23-49-118. Execution and filing of articles with department — Certificate of dissolution.

(a) The articles of dissolution shall be executed in duplicate and presented in duplicate to the State Bank Department accompanied by fees prescribed by department regulations.

(b)(1) Upon presentation of the articles of dissolution, the Bank Commissioner shall endorse his or her approval upon each of the duplicate copies of the articles if he or she finds that they conform to law.

(2) When all fees have been paid as required by law, the commissioner shall file one (1) copy of the articles in the department and issue two (2) certificates of dissolution. One (1) certificate of dissolution shall be filed with the department and the second shall be delivered to the receiver.

(c) Upon the issuance of the certificate of dissolution, the institution shall be dissolved and its existence shall cease.

(d) Upon the issuance of the certificate of dissolution, the receiver shall be authorized, as agent for the directors and shareholders of any subsidiary trust company, to file any and all documents with the Secretary of State necessary to terminate its corporate existence under applicable corporate law.

History. Acts 1997, No. 89, § 1.

23-49-119. Voluntary liquidation.

(a)(1) An application for approval to voluntarily liquidate the affairs of an institution shall be submitted to the Bank Commissioner in the manner and form that the commissioner may prescribe, shall include the information set forth in subsection (b) of this section, and shall contain such additional information which the commissioner may require.

(2) The application shall include duplicate copies of a resolution authorizing the dissolution and duplicate copies of a certificate, verified by the applicant's president or a vice president, setting forth the facts pertaining to the resolution and also that all of the applicant's liabilities have been paid in full.

(b) Each duplicate certificate shall have annexed thereto, over the official signatures, evidence showing:

(1) The date on which the resolution was authorized by the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote thereon;

(2) The number of shares of each class entitled to vote on the resolution which were outstanding on the date of the stockholders' meeting;

(3) The number of shares of each class entitled to vote on the resolution whose owners were present in person or by proxy;

(4) The number of shares of each class voted for and against the resolution; and

(5) The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.

(c)(1) Upon receipt of the application, the commissioner shall investigate its merits.

(2) If the commissioner is satisfied that the application is complete and that all applicable provisions of law have been complied with, he or she shall cause an examination to be made of the applicant institution for the purpose of verifying the payment of all of its liabilities.

(3) If the examination satisfies the commissioner that all of the applicant's liabilities have been paid, he or she shall endorse one (1) copy of the certificate with his or her statement that the institution is voluntarily liquidating.

(d) The return of the endorsed copy of the certificate shall operate to free the institution from further examination and to authorize it, under its original corporate name, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all such other things as may be necessary to realize upon its remaining assets for the pro rata benefit of its stockholders, but not to engage or continue in any new or other business under its charter or otherwise.

(e) The liquidation shall proceed as expeditiously as possible, and at the conclusion thereof, the institution shall surrender its charter.

(f) In lieu of continuing the liquidation under the original corporate name, the institution may transfer the remaining assets to a trustee agreed upon by the stockholders by a majority vote and shall thereupon surrender its charter.

(g) Each application for approval of a voluntary dissolution shall be accompanied by a fee as shall be set by State Bank Department regulations and shall be paid to the department.

History. Acts 1997, No. 89, § 1.

23-49-120. Voluntarily placing an institution in possession of commissioner.

(a) Any institution may place its affairs and assets under the control of the Bank Commissioner by posting a notice on its front door as follows: "This financial institution is in the possession of the Arkansas State Bank Commissioner".

(b) The posting of the notice or the taking possession of any institution by the commissioner shall be sufficient to place all of the assets and property of whatever nature in the possession of the commissioner and shall operate as a bar to and dissolution of any attachment proceedings.

History. Acts 1997, No. 89, § 1.

CHAPTER 50

MISCELLANEOUS VIOLATIONS OF BANKING LAWS

SECTION.

- 23-50-101. Prosecution of violations — Nonliability of commissioner.
- 23-50-102. Forfeiture of charter.
- 23-50-103. Misleading actions or use of words by unauthorized persons.
- 23-50-104. Circulation of false rumor injurious to bank.
- 23-50-105. Embezzlement, misuse of funds, etc., by officer, director, etc.
- 23-50-106. False statements or records —

SECTION.

- Bribery of commissioner, examiner, or department employee.
- 23-50-107. False statements or records by officer, agent, or employee.
- 23-50-108. False reports by commissioner or examiner — Acceptance of bribe.
- 23-50-109. Disclosure of information or false report by examiner.
- 23-50-110. Certification of check when funds insufficient.

Effective Dates. Acts 1997, No. 89, § 5: May 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 becomes effective on June 1, 1997 and that this act should become effective prior to the effective date

of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 31, 1997."

23-50-101. Prosecution of violations — Nonliability of commissioner.

(a) The Bank Commissioner may initiate any appropriate civil or administrative action or remedy upon discovering a violation of the Arkansas Banking Code of 1997 or any other statute or regulation the enforcement of which is within the scope of his or her duty.

(b) Civil, administrative, or criminal actions initiated by the commissioner under this section which expose him or her or his or her estate to personal liability for damages, or otherwise, shall be defended by the State of Arkansas, and judgments, if any shall be obtained against him or her or his or her estate, shall be borne by the State of Arkansas.

(c) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith reliance upon an order or regulation of the State Bank Department notwithstanding a subsequent decision by a court invalidating the order or regulation.

History. Acts 1997, No. 89, § 1.

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this

section is codified as chapters 45-50 of this title.

23-50-102. Forfeiture of charter.

(a)(1) If the directors of any institution under the supervision of the State Bank Department shall knowingly violate or knowingly permit any of its officers, agents, or servants to violate any of the laws enacted for the regulation of any such institutions or any department regulations, all rights, privileges, and franchises of the institution shall be subject to forfeiture.

(2)(A) Any violation shall, however, be determined in the first instance by the Bank Commissioner, after notice to the institution of not less than five (5) days, and after hearing thereon, and subject to appeal by the institution to the circuit court of the county wherein the institution has its main office.

(B) Any appeal shall be cognizable and subject to hearing by the circuit court, either in term time or in vacation, at chambers, upon five (5) days' notice of the taking of the appeal and of the time and place for the hearing.

(b)(1) Upon rendition of any decision adverse to any institution, the commissioner shall be authorized, in his or her discretion, to take charge of the institution and manage and supervise the business thereof, pending any appeal that may be taken from the decision or orders.

(2) Upon affirmance by the circuit court of the decision or orders appealed from, the commissioner shall be authorized to continue supervision, or to suspend the charter, of the institution, pending compliance with the decision or orders.

(3) If the decision or orders are not complied with in the case of a state bank or subsidiary trust company within a reasonable time to be fixed by the commissioner, the department shall proceed to liquidate the business and assets of the state bank or subsidiary trust company in the same manner as is provided in the case of insolvent state banks.

History. Acts 1997, No. 89, § 1.

23-50-103. Misleading actions or use of words by unauthorized persons.

(a)(1) All persons except those described in subdivision (a)(2) of this section are prohibited from using in this state as a portion of or in connection with their place of business their name or title or in reference to themselves in their stationery or advertising the following words or phrases, alone or in combination with any other word or phrase: "bank", "banker", "bankers", "banking", "federal reserve", "trust company", "trust", "savings and loan", "credit union", or "building and loan" or any other word or phrase that tends to induce the belief that the party using it is authorized to engage in the business of a bank, trust company, savings and loan association, or credit union.

(2) The prohibitions contained in subdivision (a)(1) of this section shall not apply to those persons that discharge the burden of proving their authority to use the words or phrases described in subdivision

(a)(1) of this section under the laws of this or another state or of the United States.

(b) All persons except those described in subdivision (a)(2) of this section are prohibited from doing or soliciting business in this state substantially in the manner or so as to induce the belief that the business in whole or in part is that of a bank, savings bank, trust company, credit union, or savings and loan association, either by the sale of contract, or of shares of its capital stock upon partial or installment payments thereof, or by the receipt of money, savings, dues, or other deposits, or by the issuance of certificates of deposit or certificates of investment of money, savings, or dues.

(c) Nothing in this section shall be construed as preventing the use of the word “bankers” in combination with other words in connection with the place of business, name, and title of any finance or investment company operated in connection with, as a subsidiary to, or having joint offices with a bank or trust company in this state, if the bank or trust company is subject to the supervision of the Bank Commissioner and if the bank or trust company has the word “bankers” alone or in combination with other words in its name or title.

(d) Each violation of subsection (a) of this section shall constitute a Class A misdemeanor.

(e) It is declared to be public policy that this law be liberally construed in favor of its enforcement.

(f) Nothing in this section shall be construed to authorize any person to engage in any activity not otherwise authorized under Arkansas law.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 355.

23-50-104. Circulation of false rumor injurious to bank.

A person is guilty of a Class A misdemeanor whenever he or she:

(1) Maliciously, and without cause, circulates or causes to be circulated, either verbally or in writing, any rumor with the intent to injuriously affect the financial standing or reputation of any bank doing business in this state;

(2) Makes any statement or circulates or assists in circulating any false rumor for the purpose of injuring the financial standing of any bank; or

(3) Seeks either by word or action to start a run upon a bank or connives or conspires with any parties for the purpose of injuring the standing or reputation or starting a run on the bank.

History. Acts 1997, No. 89, § 1.

23-50-105. Embezzlement, misuse of funds, etc., by officer, director, etc.

(a) The following persons shall be guilty of a felony:

(1) Any officer, director, agent, or employee of any bank or subsidiary trust company who:

(A) Embezzles or willfully misapplies any of the moneys, funds, or credits of the bank or subsidiary trust company;

(B) Without authority from the directors of the bank or subsidiary trust company issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, or assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or

(C) Makes any false entry in any book, report, or statement of the bank or trust company with the purpose in any case to injure or defraud the bank or subsidiary trust company, the Bank Commissioner, any agent or examiner appointed to examine the affairs of the bank or subsidiary trust company, or the State Banking Board;

(2) Every receiver or liquidating agent of a bank or subsidiary trust company who, with like purpose to defraud or injure, shall embezzle or willfully misapply any of the moneys, funds, or assets of his or her trust; and

(3) Every agent, attorney, employee, or assistant of any receiver or liquidating agent of any bank or subsidiary trust company who with like purpose to defraud or injure shall embezzle or willfully misapply any of the moneys, funds, or assets of the trust of the receiver or liquidating agent.

(b) Upon conviction, the person shall be fined in any sum not more than one million dollars (\$1,000,000) or shall be imprisoned in the Arkansas penitentiary for not more than thirty (30) years, or both.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 446.

23-50-106. False statements or records — Bribery of commissioner, examiner, or department employee.

The following persons shall be guilty of a Class D felony:

(1) Any person or persons who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any financial institution with the purpose to deceive the Bank Commissioner or examiner;

(2) Any person or persons who shall knowingly subscribe to or exhibit false papers with the purpose to deceive the commissioner or the examiner;

(3) Any person or persons who shall make or publish any false statement concerning the assets, liabilities, or affairs of any financial institution; or

(4) Any person or persons who shall bribe or attempt to bribe or offer any gratuity to the commissioner or any examiner.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 447.

23-50-107. False statements or records by officer, agent, or employee.

Every officer, agent, or employee of any financial institution organized or doing business under the laws of the state who knowingly subscribes to or makes any false reports or any false statements or entries in the books of the financial institution or knowingly subscribes or exhibits any false writing or paper with the purpose to deceive any person as to the condition of the financial institution is guilty of a Class A misdemeanor.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 448.

23-50-108. False reports by commissioner or examiner — Acceptance of bribe.

Any commissioner or examiner who shall knowingly make a false or fraudulent report of the condition of any financial institution with the purpose to aid or abet its officers, owners, or agents in continuing to operate an insolvent institution or to injure the financial institution, or any examiner who shall receive or accept any bribe or gratuity given for the purpose of inducing him or her not to file a true and correct report of the condition thereof or who shall neglect to make an examination thereof because of having received a bribe or gratuity, is guilty of a Class D felony.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 449.

23-50-109. Disclosure of information or false report by examiner.

Any examiner who shall disclose any information obtained by him or her in the course of his or her employment, except to the Bank Commissioner or the directors of the financial institution, or when subpoenaed as a witness in a legal proceeding, or who shall knowingly make, state, or publish any false statement or report concerning the assets, liabilities, or affairs of the financial institution is guilty of a Class D felony, shall be immediately removed from office, and shall be liable under his or her official bond to the institution injured.

History. Acts 1997, No. 89, § 1; 2005, No. 1994, § 456.

23-50-110. Certification of check when funds insufficient.

(a) It shall be unlawful for any officer, director, agent, or employee of any bank to certify any check drawn upon the bank unless the person drawing the check has on deposit with the bank, at the time the check is certified, an amount of money not less than the amount specified in the check.

(b) Any check so certified by a duly authorized officer, director, agent, or employee shall be a good and valid obligation against the bank.

(c) However, any officer, director, agent, or employee of any bank who shall willfully violate any provision of this section, or who shall resort to any device or receive any fictitious obligation, directly or collaterally, in order to evade the provisions thereof, or who shall certify a check before the amount thereof shall have been regularly deposited in the bank to the credit of the drawer thereof is guilty of a Class A misdemeanor.

History. Acts 1997, No. 89, § 1.

CHAPTER 51

ARKANSAS TRUST INSTITUTIONS ACT

SECTION.

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- 23-51-199. Choice of law governing fiduciary investments.
- 23-51-200 — 23-51-211. [Repealed.]

23-51-101. Title.

This chapter may be cited as the “Arkansas Trust Institutions Act”.

History. Acts 1997, No. 940, § 1.

23-51-102. Certain definitions.

(a) For the purposes of this chapter:

(1) “Account” means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity;.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(A) Accept or execute trusts, including to:

(i) Act as trustee under a written agreement;

(ii) Receive money or other property in its capacity as trustee for investment in real or personal property;

(iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;

(iv) Act as trustee of the estate of a deceased person; or

(v) Act as trustee for a minor or incapacitated person;

(B) Administer in any other fiduciary capacity real or tangible personal property; or

(C) Act pursuant to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property;

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company;

(5) "Authorized trust institutions" means any state trust company, subsidiary trust company, or trust office of a trust institution located in Arkansas;

(6) "Bank" means a state bank, national bank, any bank chartered by any state of the United States or any foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(7) "Bank supervisory agency" means:

(A) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision [abolished] and any successor to these agencies;

(8) "Branch" with respect to a depository institution has the meaning set forth in § 23-48-702;

(9) "Capital" means:

(A) The sum of:

(i) The par value of all shares of the state trust company having a par value that have been issued;

(ii) The consideration fixed by the board in the manner provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., for all shares of the state trust company without par value that have been issued, except a part of that consideration that:

(a) Has been actually received;

(b) Is less than all of that consideration; and

(c) The board, by resolution adopted not later than sixty (60) days after the date of issuance of those shares, has allocated to surplus with the prior approval of the commissioner; and

(iii) An amount not included in subdivisions (a)(9)(A)(i) and (ii) of this section that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) All amounts otherwise included in subdivisions (a)(9)(A)(i) and (ii) of this section that are attributable to the issuance of securities by the state trust company and that the commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities;

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the commissioner may by regulation prescribe;

(11) "Charter" means a charter, license or other authority issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state;

(12) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent beneficiaries of an account;

(13) "Commissioner" means the Bank Commissioner then in office and, where appropriate, all of his or her successors and predecessors in office;

(14) "Company" includes a bank, trust company, subsidiary trust company, corporation, limited liability company, partnership, association, business trust, or another trust;

(15) "Control" means:

(A) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) The ability to control the election of a majority of the board of a state trust company or other company; and

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the commissioner after notice and an opportunity for hearing;

(16) "Department" means the State Bank Department;

(17) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. §§ 1813(c)(2) and (3);

(18) "Equity capital" means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company;

(19) "Equity security" means:

(A) Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;

(B) A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision (a)(19);

(D) A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision (a)(19); and

(E) A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision (a)(19) that evidences an existing or contingent equity ownership interest;

(20) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company;

(21) "Hazardous condition" with respect to a trust company means:

(A) A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the commissioner;

(B) Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the commissioner; or

(C) A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) Has equity capital less than the amount of capital the trust company is required to maintain under § 23-51-110, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) Violates or refuses to comply with this chapter, another statute or regulation applicable to trust companies, or any final and enforceable order of the commissioner;

(v) Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) Conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with:

(a) Inexperienced or inattentive management;

(b) Potentially dangerous operating practices;

(c) Infrequent or inadequate audits;

(d) Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

(e) Failure to adhere to sound administrative practices;

(f) Frequent occurrences of violations of laws, regulations or terms of the governing instruments; or

(g) Engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest;

(22) "Insider" means:

(A) Each director, officer or principal shareholder of the trust company;

(B) Any company controlled by a person described by subdivision (a)(22)(A) of this section; or

(C) Any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation;

(23) "Insolvent" means a circumstance or condition in which a state trust company:

(A) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) Has equity capital less than one million dollars (\$1,000,000), as determined under regulatory accounting principles;

(C) Fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with § 23-51-130;

(D) Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by §§ 23-51-150 — 23-51-155; or

(E) Attempts to dissolve or liquidate other than as provided by §§ 23-51-156 — 23-51-161;

(24) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit;

(25) "License" means the authority granted by the commissioner pursuant to this chapter to establish, acquire or maintain a trust office;

(26) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person;

(27) "New trust office" means a trust office located in a host state which:

(A) Is originally established by the trust institution as a trust office; and

(B) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any such trust institution or trust office;

(28) "Office" with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch;

(29) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company;

(30) "Operating subsidiary" means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company;

(31) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state;

(32) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state;

(33) "Out-of-state trust institution" means a trust institution that is not a state trust institution;

(34) "Person" means an individual, a company or any other legal entity;

(35) "Principal office" with respect to:

(A) A state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one executive officer of the state trust company maintains an office; or

(B) A trust institution other than a state trust company, means its principal place of business in the United States;

(36) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the

outstanding shares of any class of voting securities of a state trust company or other company;

(37) "Private trust company" means a trust company that does not engage in a trust business with the general public;

(38) "Receiver" means the commissioner, an agent of the commissioner or any federal or other governmental agency exercising the powers and duties of a receiver pursuant to § 23-51-164;

(39) "Savings association" means a depository institution that is neither a bank nor a foreign bank;

(40) "Shareholder" means an owner of a share in a state trust company;

(41) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences;

(42) "State" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands;

(43) "State bank" means a bank chartered to act as a fiduciary by this state;

(44) "State trust company" means a corporation organized or reorganized under this chapter;

(45) "State trust institution" means a trust institution having its principal office in this state;

(46) "Subsidiary" means a company that is controlled by another person. The term includes a subsidiary of a subsidiary;

(47) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101 et seq. and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, § 23-32-1901 et seq. [repealed], to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as that term is defined in § 23-47-801 et seq.;

(48) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits;

(49) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

(A) Acting as a fiduciary, or

(B) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity;

(50) "Trust company" means a state trust company, subsidiary trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank;

(51) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client;

(52) "Trust institution" means a depository institution, state bank or trust company;

(53) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the commissioner to act as a fiduciary;

(54) "Unauthorized trust activity" means:

(A) A company, other than one identified in § 23-51-165(a), acting as a fiduciary within this state;

(B) A company engaging in a trust business in this state at any office of the company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of the company; or

(C) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner pursuant to § 23-51-182 is in effect;

(55) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger; and

(56) "Voting security" means a share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.

(b) These definitions shall be liberally construed to accomplish the purposes of this chapter. The commissioner by regulation may adopt other definitions to accomplish the purposes of this chapter.

History. Acts 1997, No. 940, § 2.

A.C.R.C. Notes. The Office of Thrift Supervision referred to in this section was abolished by the Dodd-Frank Wall Street Reform and Consumer Protection Act,

Pub. L. No. 111-203. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

23-51-103. Regulations.

The Bank Commissioner may promulgate such regulations as he or she determines to be necessary or appropriate in order to implement the provisions of this chapter.

History. Acts 1997, No. 940, § 3.

23-51-104. Organization and powers of state trust company.

(a) Subject to the other provisions of this chapter, one or more persons may organize and charter a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(b) Subject to § 23-51-111, a state trust company may exercise the powers of an Arkansas business corporation reasonably necessary or helpful to enable exercise of its specific powers under this chapter.

(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.

(d) Subject to § 23-51-130, a state trust company may deposit trust funds with itself or an affiliate.

(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation (FDIC), a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.

History. Acts 1997, No. 940, § 4.

23-51-105. Articles of association of state trust company.

The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:

- (1) The name of the state trust company;
- (2) The period of its duration, which may be perpetual;
- (3) The powers of the state trust company, which may be stated as:
 - (A) All powers granted to a state trust company in this state; or
 - (B) A list of the specific powers that the state trust company chooses and is authorized to exercise;
- (4) The aggregate number of shares that the state trust company will be authorized to issue, the number of classes of shares, which may be one or more, the number of shares of each class if more than one class, and a statement of the par value of the shares of each class or that the shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class;
- (6) Any provision granting to shareholders the preemptive right to acquire additional shares of the state trust company;

(7) Any provision granting the right of shareholders to cumulative voting in the election of directors;

(8) The aggregate amount of consideration to be received for all shares initially issued by the state trust company, and a statement signed and verified by the organizers that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the Bank Commissioner;

(9) Any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this chapter to be set forth in the articles of association;

(10) The street address of the state trust company's principal office required to be maintained under § 23-51-172; and

(11) The number of directors or managers constituting the initial board, which may not be fewer than three (3), and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified.

History. Acts 1997, No. 940, § 5.

23-51-106. Application for state trust company charter.

(a) An application for a state trust company charter must be made under oath and in the form required by the Bank Commissioner and must be supported by information, data, records, and opinions of counsel that the commissioner requires. The application must be accompanied by a non-refundable filing fee of not less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000) as set by regulation of the commissioner and proof of escrow of deposit for the required capital.

(b) The commissioner shall grant a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the commissioner shall examine the business plan which shall be submitted as part of the application for a state trust company charter and consider:

(1) The market or markets to be served;

(2) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(3) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) Whether the proposed officers and directors, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust

company will operate in compliance with law and that success of the proposed state trust company is probable;

(5) Whether each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(6) Whether the organizers are acting in good faith.

(c) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

History. Acts 1997, No. 940, § 6.

23-51-107. Notice and investigation of charter application.

(a) The Bank Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Upon filing of an application with the commissioner, the organizers of the proposed state trust company shall give notice of filing through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation and shall give written notice of filing through the United States mail to all trust institutions maintaining a principal office or a trust office in the county wherein the principal office of the proposed state trust company is to be located.

(b) At the expense of the organizers, the commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. The commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by the Freedom of Information Act of 1967, § 25-19-101 et seq. Regulations adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the State Bank Department under this section. Except as provided in regulations regarding confidential information, the financial statement of a proposed officer, director or principal shareholder is confidential and not subject to public disclosure.

History. Acts 1997, No. 940, § 7.

23-51-108. Hearing and decision on charter application.

(a) No person shall appear in opposition to the application unless the person shall have filed a written protest to the granting of the application within thirty (30) days of the date of the notice of the filing of the application. The protest must state the grounds for objection and must be accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for each

protestant, such amount to be set by regulation promulgated by the Bank Commissioner.

(b) Once the written report of investigation has been completed, the commissioner shall establish a time for hearing on the charter application.

(c) Notice of the time, place, and purpose of the hearing shall be given at least thirty (30) days before the hearing as follows:

(1) By letter from the commissioner to the organizers of the proposed state trust company and to each trust institution to which the organizers of the application are required to give written notice pursuant to § 23-51-107(a);

(2) By letter from the commissioner to each person who has notified the commissioner of an intention to oppose the application, provided that if a group of persons has protested the application, the notice may be given to one (1) member of the group; and

(3) By release to news media.

(d) If the commissioner sets a hearing, the commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law and regulations.

(e) Based on the record of any hearing conducted pursuant to subsection (d) of this section, the commissioner shall determine whether all of the necessary conditions set forth in § 23-51-106(b) have been established and shall enter an order granting or denying the charter. The commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

History. Acts 1997, No. 940, § 8.

23-51-109. Issuance of charter.

(a) A state trust company may not engage in the trust business until it receives its charter from the Bank Commissioner. The commissioner may not deliver the charter until the state trust company has:

(1) Elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the commissioner; and

(2) Complied with all other requirements of this chapter relative to the organization of a state trust company.

(b) If a state trust company does not open and engage in the trust business within six (6) months after the date it receives its charter or conditional approval of application for charter, or within such further period as such period may be extended, the commissioner shall revoke the charter or cancel the conditional approval of application for charter without judicial action.

History. Acts 1997, No. 940, § 9.

23-51-110. Required capital.

(a) The Bank Commissioner may not issue a charter to a state trust company having required capital of less than one million dollars (\$1,000,000), except as provided in subsection (b) of this section.

(b) The commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company. The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include but are not limited to,

- (1) The nature and type of business conducted;
- (2) The nature and degree of liquidity in assets held in a corporate capacity;
- (3) The amount of fiduciary assets under management;
- (4) The type of fiduciary assets held and the depository of the assets;
- (5) The complexity of fiduciary duties and degree of discretion undertaken;
- (6) The competence and experience of management;
- (7) The extent and adequacy of internal controls;
- (8) The presence or absence of annual unqualified audits by an independent certified public accountant;
- (9) The reasonableness of business plans for retaining or acquiring additional capital; and
- (10) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries and grantors.

(c) The proposed effective date of an order requiring an existing state trust company to increase its capital must be stated in the order as no sooner than twenty (20) days after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section and § 23-51-118, a state trust company to which the commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the commissioner directs under subsection (b) of this section.

23-51-111. Application of laws relating to general business corporations.

(a) The Arkansas Business Corporation Act, § 4-27-101 et seq., applies to a trust company to the extent not inconsistent with this chapter or the proper business of a trust company, except that any reference to the Secretary of State means the Bank Commissioner unless the context requires otherwise.

(b) Unless expressly authorized by this chapter or a regulation of the commissioner, a trust company may not take an action authorized by the Arkansas Business Corporation Act, § 4-27-101 et seq., regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Arkansas Business Corporation Act, § 4-27-101 et seq., would require a filing with the Secretary of State if the trust company were a business corporation, without first submitting the filing to the commissioner for the same purposes for which it otherwise would be required to be submitted to the Secretary of State and compliance with the applicable provisions of this chapter.

(c) The commissioner may adopt regulations to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Arkansas Business Corporation Act, § 4-27-101 et seq., applicable to an action taken under this chapter.

History. Acts 1997, No. 940, § 11.

23-51-112. Commissioner hearings — Appeals.

(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law. A hearing before the Bank Commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the commissioner. A matter made confidential by law must be considered by the commissioner in a closed hearing.

(b) The commissioner may convene a hearing to receive evidence and argument regarding any matter before the commissioner for decision or review under this chapter.

(c) No person shall appear in opposition to the application unless the person shall have filed a written protest pursuant to § 23-51-108 and paid the applicable fee.

(d) At the hearing all organizers of the proposed state trust company and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.

(e) The commissioner may subpoena witnesses on his or her own motion or on the request of any party to the proceedings.

(f) The admission of evidence at the hearing shall be controlled by § 25-15-213. The parties shall have the right to cross-examine witnesses. Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the commission-

er's specialized knowledge. The parties may bind themselves by stipulation.

(g) The organizers shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the organizers to furnish at least one (1) copy of the transcript to the commissioner free of charge.

(h) The commissioner shall render his or her decision in writing, at or after a hearing, which decision shall include the commissioner's findings of fact and conclusions of law.

(i)(1) The time for filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the date the final decision of the commissioner is mailed or delivered, in written form, to the parties desiring to appeal.

(2) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

History. Acts 1997, No. 940, § 12.

23-51-113. Trust companies chartered under prior law.

The charter of a corporation which was previously a trust company incorporated under any laws of this state prior to the adoption of the Arkansas Banking Code of 1997 may be converted to a state trust company under this chapter, if the charter, or evidence satisfactory to the Bank Commissioner that the corporation is still in existence and in good standing, is presented to the State Bank Department within six (6) months of enactment of this chapter for substitution of a charter issued under this chapter.

History. Acts 1997, No. 940, § 13.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas Banking Code of 1997 referred to in this title.

23-51-114. Amendment of state trust company articles of association.

(a) A state trust company that has been granted a charter under § 23-51-109 or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares in one or more classes or series.

(b) An amendment authorizing the issuance of shares in series must contain:

(1) The designation of each series and of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) A statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.

(c) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders must be made or obtained in accordance with provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., for the amendment or restatement of articles of incorporation except as otherwise provided by this chapter or regulations adopted under this chapter. The original and one copy of the articles of amendment or restated articles of association must be filed with the Bank Commissioner for approval. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the amendment or restatement within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.

(d) If the commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the commissioner, and any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records; and

(3) Deliver a certified copy to the amendment or restatement to the state trust company.

(e) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

History. Acts 1997, No. 940, § 14.

23-51-115. Establishing a series of shares.

(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series of shares, the board may do so only on compliance with this section and any regulations adopted under this chapter.

(b) A series of shares may be established in the manner provided by the provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., as if the state trust company were a domestic corporation, but the shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one copy of the articles of amendment required by the Arkansas Business Corporation Act, § 4-27-101 et seq., with the Bank Commissioner. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the series within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the commissioner, and that any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records; and

(3) Deliver a certified copy of the statement to the state trust company.

History. Acts 1997, No. 940, § 15.

23-51-116. Change in outstanding capital and surplus.

(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or otherwise, without the prior approval of the Bank Commissioner, except as permitted by this section or regulations adopted under this chapter.

(b) Unless otherwise restricted by regulations, prior approval is not required for an increase in capital accomplished through:

(1) Issuance of shares of common stock for cash;

(2) Declaration and payment of pro rata share dividends as defined in the Arkansas Business Corporation Act, § 4-27-101 et seq.; or

(3) Adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

History. Acts 1997, No. 940, § 16.

23-51-117. Capital notes or debentures.

(a) With the prior written approval of the Bank Commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders, issue and sell its capital notes or debentures, which must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.

(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes as may be provided by regulations adopted under this chapter.

History. Acts 1997, No. 940, § 17.

23-51-118. Private trust company.

(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this chapter applicable to a trust company unless expressly exempted therefrom in writing by the Bank Commissioner pursuant to this section or by regulation adopted by the commissioner.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of §§ 23-51-105(11), 23-51-106(b), 23-51-107(a) and (b), 23-51-110(a), 23-51-122, 23-51-126(b), (c), and (d), 23-51-127, and 23-51-128. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one or more family members;

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one (1) or more trusts or charitable organizations established by the individual or individuals; and

(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling the private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.

(e) The commissioner may adopt regulations defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this chapter that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

History. Acts 1997, No. 940, § 18.

23-51-119. Requirements for a private trust company.

(a) APPLICATION.

(1) A private trust company requesting an exemption from the provisions of this chapter pursuant to § 23-51-118 shall file an application with the Bank Commissioner containing the following:

(A) A non-refundable application fee on an amount not less than three thousand dollars (\$3,000) nor more than five thousand dollars (\$5,000), as set by regulations issued by the commissioner;

(B) A detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) A statement under oath of the reason for requesting the exemption;

(D) A statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the commissioner;

(E) The current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and

(F) Listing of the specific provisions of the chapter for which the request for exemption is made.

(2) The commissioner shall not approve a private trust company exemption unless the application is completed as required in subdivision (a)(1) of this section.

(b) REQUIREMENTS. To maintain status as an exempt private trust company under this chapter, the private trust company shall comply with the following:

(1) An exempt private trust company shall not transact business with the public;

(2) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the commissioner and be accompanied by a fee set by regulations issued by the commissioner. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the State Bank Department. The

department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification;

(3) An exempt private trust company shall comply with the principal office provisions of § 23-51-172 and with the address and telephone requirements of subdivision (a)(1)(E) of this section;

(4) The exempt private trust company shall pay all applicable corporate franchise taxes.

(c) CHANGE OF CONTROL. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this chapter and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

(d) AUTHORITY TO REVOKE. The commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) The exempt private trust company makes a false statement under oath on any document required to be filed by the chapter or by any regulation promulgated by the commissioner;

(2) The exempt private trust company fails to submit to an examination as required by § 23-51-184;

(3) The exempt private trust company withholds requested information from the commissioner; or

(4) The exempt private trust company violates any provision of this section applicable to exempt private trust companies.

(e) NOTIFICATION OF REVOCATION OF EXEMPTION. If the commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be sooner than five (5) calendar days after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the chapter applicable to non-exempt state trust companies.

(f) **COMPLIANCE PERIOD.** A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this chapter from which it was formerly exempt. If, however, the commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the commissioner may shorten or eliminate, in the commissioner's sole discretion, the five (5) calendar days compliance period.

(g) **REMEDIES FOR FAILURE TO COMPLY.** If the private trust company does not comply with all of the provisions of this chapter, including such capitalization requirements as have been determined by the commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the commissioner may:

(1) Institute any action or remedy prescribed by this chapter, or any applicable rule or regulation; or

(2) Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

History. Acts 1997, No. 940, § 19.

23-51-120. Conversion to public trust company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Bank Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to § 23-51-118 shall cease to apply on the effective date of the notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence transacting business with the general public thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.

(c) The thirty-day period of review may be extended by the commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transact-

ing of business of the general public would be contrary to the public interest or if the commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this chapter from which the notificant had been previously exempted pursuant to § 23-51-118.

History. Acts 1997, No. 940, § 20.

23-51-121. Investment in state trust company facilities.

(a) In this chapter, “state trust company facility” means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(1) Providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(2) Conducting trust business, including meeting the reasonable needs and convenience of the state trust company’s customers, computer operations, document and other item processing, maintenance and record retention and storage;

(3) Holding, improving, and occupying as an incident to future expansion of the state trust company’s facilities; or

(4) Conducting another activity authorized by regulations adopted under this chapter.

(b) Without the prior written approval of the Bank Commissioner, a state trust company may not directly or indirectly invest an amount in excess of its capital and surplus in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by regulations adopted under this chapter, in computing this limitation a state trust company:

(1) Shall include:

(A) Its direct investment in state trust company facilities;

(B) Any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by subsection (a) of this section;

(C) Any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) Any indebtedness incurred on state trust company facilities by a company:

(i) That holds title to the facility;

(ii) That is an affiliate of the state trust company; and

(iii) In which the state trust company is invested in the manner described by subdivision (b)(1)(B) or subdivision (b)(1)(C) of this section; and

(2) May exclude an amount included under subdivisions (b)(1)(B)-(D) of this section to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(c) Real estate acquired under subdivision (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.

(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

History. Acts 1997, No. 940, § 21.

23-51-122. Other real estate.

(a) A state trust company may not acquire real estate except:

(1) As permitted by § 23-51-121 or as otherwise provided by this chapter, including regulations adopted under this chapter;

(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) With the prior written approval of the Bank Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subdivisions (a)(1) and (2) of this section not later than:

(1) The fifth anniversary of the date:

(A) It was acquired, except as otherwise provided by regulations adopted under this chapter; or

(B) It ceases to be used as a state trust company facility; or

(2) The third anniversary of the date it ceases to be a state trust company facility as provided by § 23-51-121(c).

(d) The commissioner on application may grant one (1) or more extensions of time for disposing of real estate if the commissioner determines that:

(1) The state trust company has made a good faith effort to dispose of the real estate; or

(2) Disposal of the real estate would be detrimental to the state trust company.

History. Acts 1997, No. 940, § 22.

23-51-123. Securities.

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Bank Commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to not less than forty percent (40%) of the state trust company's capital under § 23-51-110 in unencumbered cash, cash equivalents, and readily marketable securities.

(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. The commissioner may authorize investments in excess of this limitation on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of Congress and authorized thereby to issue such a guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of Congress and authorized thereby to issue such commitments or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions thereof;

(6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;

(7) Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such

demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that any such repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian;

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.

(e) The commissioner may adopt regulations to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

History. Acts 1997, No. 940, § 23.

Act of 1940, referred to in this section, is

U.S. Code. The Investment Company

codified as 15 U.S.C.S. § 80a-1 et seq.

23-51-124. Transactions in state trust company shares.

(a) A state trust company may acquire its own shares if:

(1) The amount of its undivided profits is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; and

(2) The state trust company obtains the prior written approval of the Bank Commissioner.

(b) A state trust company shall not make loans upon the security of its own shares.

History. Acts 1997, No. 940, § 24.

23-51-125. Subsidiaries.

(a) Except as otherwise provided by this chapter or regulations adopted under this chapter, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b) A state trust company may not invest more than an amount equal to twenty percent (20%) of its capital base in a single subsidiary and may not invest an amount in excess of forty percent (40%) of its capital base in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust

company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The Bank Commissioner may authorize investments in excess of these limitations on written application if the commissioner concludes that:

(1) The excess investment is not prohibited by other applicable law; and

(2) The safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the commissioner describing in detail the proposed activities of the subsidiary.

(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary thirty (30) days after the date the commissioner receives the state trust company's letter, unless the commissioner specifies another date. The commissioner may extend the thirty-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the commissioner.

(e) A subsidiary of a state trust company is subject to regulation by the commissioner to the extent provided by this chapter or regulations adopted under this chapter. In the absence of limiting regulations, the commissioner may regulate a subsidiary as if it were a state trust company.

History. Acts 1997, No. 940, § 25.

23-51-126. Mutual funds.

(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under § 23-51-123(d), the state trust company may invest in the investment company without limitation.

(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of § 23-51-123(c), the state trust company may invest in the investment company not more than an amount equal to twenty percent (20%) of the

state trust company's capital base. This provision does not apply to a money market fund.

(d) In evaluating investment limits under this chapter, a state trust company may not be required to combine:

(1) The state trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or

(2) The state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.

History. Acts 1997, No. 940, § 26.

23-51-127. Engaging in commerce prohibited.

Except as otherwise provided by this chapter or regulations adopted under this chapter, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfil a fiduciary obligation to a client.

History. Acts 1997, No. 940, § 27.

23-51-128. Lending limits.

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a non-insider.

(c) The Bank Commissioner may adopt regulations to administer and carry out this section, including regulations to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.

(d) The commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.

(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f) An officer, director, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.

History. Acts 1997, No. 940, § 28.

23-51-129. Lease financing transactions.

(a) Subject to regulations adopted under this chapter, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the Bank Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of § 23-51-128.

History. Acts 1997, No. 940, § 29.

23-51-130. Trust deposit.

(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary, provided:

(1) It maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or other entity approved by the Bank Commissioner, either in this state or elsewhere;

(2) The total market value of the security is at all times at least equal to the amount of the deposit;

(3) The separate fund is designated as such; and

(4) The separate fund is maintained under the control of another trust institution, bank or government agency.

(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

History. Acts 1997, No. 940, § 30.

23-51-131. Common investment funds.

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The Bank Commissioner may adopt regulations to administer and carry out this section, including but not limited to regulations to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.

History. Acts 1997, No. 940, § 31.

23-51-132. Borrowing limit.

Except with the prior written approval of the Bank Commissioner, a state trust company may not have liabilities outstanding exceeding an amount equal to three times its capital base.

History. Acts 1997, No. 940, § 32.

23-51-133. Pledge of assets.

A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by § 23-51-130, or by regulations adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.

History. Acts 1997, No. 940, § 33.

23-51-134. Acquisition of control.

(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the Bank Commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This chapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this chapter or who was identified as a controlling person in a prior application filed with and approved by the commissioner;

(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(4) A transaction exempted by the commissioner by regulation or order because the transaction is not within the purposes of this chapter or the regulation of which is not necessary or appropriate to achieve the objectives of this chapter.

History. Acts 1997, No. 940, § 34.

23-51-135. Application regarding acquisition of control.

(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the Bank Commissioner:

(1) An application in the form prescribed by the commissioner;

(2) The filing fee in an amount not less than one thousand five hundred dollars (\$1,500) and not more than three thousand dollars (\$3,000), as set by regulations issued by the commissioner;

(3) All information required by regulation or that the commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the commissioner may be required of each member of the group.

(c) If the proposed transferee is not an Arkansas resident, an Arkansas company, or an out-of-state company qualified to do business in this state, a written consent to service of process on a resident of this

state in any action or suit arising out of or connected with the proposed acquisition.

(d) The proposed transferee must give public notice of the application, its date of filing, and the identity of each participant, in the form specified by the commissioner, through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, promptly after the commissioner accepts the application as complete.

History. Acts 1997, No. 940, § 35.

23-51-136. Hearing and decision on acquisition of control.

(a) Not later than sixty (60) days after the application is officially filed, the Bank Commissioner may approve the application or set the application for hearing. If the commissioner sets a hearing, the commissioner shall conduct a hearing as he or she considers advisable and consistent with governing statutes and regulations.

(b) Based on the record, the commissioner may issue an order denying an application if:

(1) The acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:

(A) The anti-competitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and

(B) The proposed acquisition is not in violation of law of this state or the United States;

(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) Plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) The state trust company will be insolvent, in a hazardous condition, not have adequate capitalization, or not be in compliance with the laws of this state after the acquisition;

(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the commissioner; or

(7) The proposed transferee is not acting in good faith.

(c) If an application filed under this section is approved by the commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this chapter.

History. Acts 1997, No. 940, § 36.

23-51-137. Appeal from adverse decision.

(a)(1) If a hearing has been held, the Bank Commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the final order by filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The time for filing such a petition for judicial review shall run from the date the final decision of the commissioner is mailed or delivered, in written form, to the parties desiring to appeal.

(3) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.

(b) The filing of an appeal under this section does not stay the order of the commissioner.

History. Acts 1997, No. 940, § 37.

23-51-138. Objection to other transfer.

This chapter may not be construed to prevent the Bank Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this chapter, if the commissioner considers the transfer to be against the public interest.

History. Acts 1997, No. 940, § 38.

23-51-139. Civil enforcement — Criminal penalties.

(a) The Bank Commissioner may bring any appropriate civil action against any person who the commissioner believes has committed or is about to commit a violation of this chapter or a regulation or order of the commissioner pertaining to this chapter.

(b) A person who knowingly fails or refuses to file the application required by § 23-51-135 commits an offense. An offense under this subsection is a Class A misdemeanor.

History. Acts 1997, No. 940, § 39.

23-51-140. Voting securities held by state trust company.

(a) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(1) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(2) The terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(3) The securities are voted solely by a co-fiduciary that is not an affiliate of the state trust company, as if the co-fiduciary were the sole fiduciary.

(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.

History. Acts 1997, No. 940, § 40.

23-51-141. Bylaws.

Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Arkansas Business Corporation Act, § 4-27-101 et seq.

History. Acts 1997, No. 940, § 41.

23-51-142. Board of directors.

(a) The board of a state trust company shall be governed by the provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., provided that the board must consist of not fewer than three directors, the majority of whom must be residents of this state.

(b) Unless the Bank Commissioner consents otherwise in writing, a person may not serve as director of a state trust company if:

(1) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) The person has been convicted of a felony; or

(3) The person has violated a provision of this chapter, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c) If a state trust company does not elect directors prior to sixty (60) days after the date of its regular annual meeting, the commissioner may commence a proceeding to appoint a receiver pursuant to § 23-51-164 to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the commissioner may close the state trust company for liquidation.

(d) A vacancy on the board that reduces the number of directors to fewer than three must be filled not later than ninety (90) days after the date the vacancy occurs. If the vacancy has not been filled upon the expiration of ninety (90) days following the date the vacancy occurs, the commissioner may commence a proceeding to appoint a receiver pursuant to § 23-51-164 to operate the state trust company and elect a board of not fewer than three persons to resolve the vacancy. If the conservator is unable to locate or elect three persons willing and able to serve as directors, the commissioner may close the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director of a state trust company, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) Accepts the position and is not disqualified from serving in the position;

(2) Will not violate or knowingly permit an officer, director, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(3) Will diligently perform the duties of the position.

(f) An advisory director is not considered a director if the advisory director:

(1) Is not elected by the shareholders of the state trust company;

(2) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) Provides solely general policy advice to the board.

History. Acts 1997, No. 940, § 42.

23-51-143. Officers.

The board shall annually elect the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. The board may appoint other officers of the state

trust company as the board considers necessary. The duties of any two or more officers may be combined by the board and held by one person.

History. Acts 1997, No. 940, § 43.

23-51-144. Certain criminal offenses.

(a) An officer, director, employee or shareholder of a state trust company commits an offense if the person knowingly:

(1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the Bank Commissioner or an agent of the commissioner; or

(2) For the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(b) An officer, director or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(c) An offense under this section is a Class D felony.

History. Acts 1997, No. 940, § 44.

23-51-145. Transactions with management and affiliates.

(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of a majority of the disinterested directors and the Bank Commissioner, a state trust company may not directly or indirectly:

(1) Sell or lease an asset of the state trust company to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company;

(2) Purchase or lease an asset in which an officer, director or principal shareholder of the state trust company or an affiliate of the state trust company has an interest; or

(3) Subject to § 23-51-128, extend credit to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company.

(b) Notwithstanding subsection (a) of this section, a lease transaction described in subdivision (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to § 23-51-128, a state trust company may not directly or indirectly extend credit to an employee, officer, director or principal shareholder of the state trust company or an affiliate of the state trust company, unless the extension of credit:

(1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders, or affiliates of the state trust company;

(2) Does not involve more than the normal risk of repayment or present other unfavorable features; and

(3) The state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders or affiliates of the state trust company.

(d) An officer or director of the state trust company who knowingly participates in or knowingly permits a violation of this section shall be guilty of a Class D felony.

(e) The commissioner may adopt regulations to administer and carry out this section, including regulations to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

History. Acts 1997, No. 940, § 45.

23-51-146. Fiduciary responsibility.

The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) The determination of policies;

(2) The investment and disposition of property held in a fiduciary capacity; and

(3) The direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

History. Acts 1997, No. 940, § 46.

23-51-147. Recordkeeping.

A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company. The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

History. Acts 1997, No. 940, § 47.

23-51-148. Bonding requirements.

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by regulations adopted under this chapter, against dishonesty, fraud, defalcation,

forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:

(1) Authorized to do business in this state; or

(2) Acceptable to the Bank Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by regulation, coverage required under subsection (a) of this section must include each director, officer and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c) A state trust company may apply to the commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The commissioner shall approve the application if the commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the commissioner shall approve the application or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing.

History. Acts 1997, No. 940, § 48.

23-51-149. Reports of apparent crime.

A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars (\$5,000), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, officer, or employee shall report the robbery, shortages or apparent or suspected misapplication to the Bank Commissioner within forty-eight (48) hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.

History. Acts 1997, No. 940, § 49.

23-51-150. Merger authority.

(a) With the prior written approval of the Bank Commissioner, a state trust company may merge or consolidate with a state bank to the same extent as a state bank under the Arkansas Banking Code of 1997 or with another person to the same extent as a business corporation under the Arkansas Business Corporation Act, § 4-27-101 et seq., subject to this chapter.

(b) Implementation of a plan of merger by a trust company and a state bank, approval of the board, and shareholders of the parties must be made or obtained as provided by the Arkansas Banking Code of 1997 as if the state trust company were a state bank, except as otherwise provided by regulations adopted under this chapter.

(c) Implementation of the plan of merger with a person other than a state bank, approval of the board and shareholders of the parties must be made or obtained as provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by regulations adopted under this chapter.

History. Acts 1997, No. 940, § 50.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas title.
Banking Code of 1997 referred to in this

23-51-151. Merger application.

(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the Bank Commissioner must be filed with the commissioner. The commissioner shall investigate the condition of the merging parties. The commissioner may require the submission of additional information as considered necessary to an informed decision.

(b) The commissioner may approve the merger if:

(1) Each resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) Each resulting state trust company has in all respects complied with the statutes and regulations relative to the organization of a state trust company;

(3) All fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;

(4) Each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) All conditions imposed by the commissioner have been satisfied or otherwise resolved.

History. Acts 1997, No. 940, § 51.

23-51-152. Approval of commissioner.

(a) If the Bank Commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the commissioner shall:

(1) Endorse the face of the original and each copy with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records; and

(3) Deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.

(b) A merger is effective on the date of approval, unless the merger agreement provides and the commissioner consents to a different effective date.

History. Acts 1997, No. 940, § 52.

23-51-153. Rights of dissenters to mergers.

A shareholder may dissent from the merger to the extent and by following the procedure provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., or regulations adopted under this chapter.

History. Acts 1997, No. 940, § 53.

23-51-154. Authority to purchase assets of another trust institution.

(a) Subject to the provisions of this section, a state trust company may purchase assets of another state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this chapter or any other applicable statutes, the purchase of all or part of the assets of the trust institution does not make the purchasing state trust company responsible for any liability or obligation of the selling trust institution that is not expressly assumed by the purchasing state trust company. Except as otherwise provided by this chapter, this chapter does not govern or prohibit the purchase by a trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b) An application in the form required by the Bank Commissioner must be filed with the commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution by a state trust company. The commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The commissioner shall approve the purchase if:

(1) The acquiring state trust company will be solvent, not in a hazardous condition and have sufficient capitalization for its business and location;

(2) The acquiring state trust company has complied with all applicable statutes and regulations including without limitation any applicable requirements of §§ 23-51-178 and 23-51-179;

(3) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring state trust company;

(4) All conditions imposed by the commissioner have been satisfied or otherwise resolved; and

(5) All fees and costs have been paid.

(c) A purchase requiring an application pursuant to subsection (b) of this section is effective on the date of approval, unless the purchase agreement provides for, and the commissioner consents to, a different effective date.

(d) The acquiring state trust company shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

History. Acts 1997, No. 940, § 54.

23-51-155. Sale of assets.

(a) The board of a state trust company, with the Bank Commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder approval if the commissioner finds:

(1) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company;

(2) The sale is in the best interest of the state trust company's clients and creditors; and

(3) The Federal Deposit Insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) All of the state trust company's liabilities to clients and depositors;

(2) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) Obligations incurred by the commissioner arising out of the supervision or sale of the state trust company; and

(4) Fees and assessments due the State Bank Department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d) This section does not affect the commissioner's right to take action under any other law. The sale by a trust company of all or substantially all of its assets with shareholder approval is deemed a voluntary dissolution and liquidation and shall be governed by § 23-49-119.

History. Acts 1997, No. 940, § 55.

23-51-156. Required vote of shareholders.

A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders owning a majority of its voting stock.

History. Acts 1997, No. 940, § 56.

23-51-157. Corporate procedure.

Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder, or in case of a shareholder's death, to the shareholder's legal representative, addressed to the shareholder's last known residence not less than ten (10) days prior to the date of the meeting. If stockholders shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such an action shall have been taken, attested by an officer of the trust company, shall be transmitted to the Bank Commissioner for approval.

History. Acts 1997, No. 940, § 57.

23-51-158. Authority to liquidate — Publication.

If the Bank Commissioner shall approve the liquidation, the commissioner shall issue to the state trust company under the commissioner's seal, a permit for that purpose. No such permit shall be issued by the commissioner until the commissioner shall be satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the commissioner shall refuse to issue a permit, and shall be authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this chapter. When the commissioner shall approve the voluntary liquidation of a state trust company, the directors of said state trust company shall cause to be published in a newspaper with a substantially statewide circulation published in the City of Little Rock a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. The notice shall be published once a week for four consecutive weeks.

History. Acts 1997, No. 940, § 58.

23-51-159. Examination and reports.

When any state trust company shall be in process of voluntary liquidation, it shall be subject to examination by the Bank Commissioner, and shall furnish such reports from time to time as may be called for by the commissioner.

History. Acts 1997, No. 940, § 59.

23-51-160. Unclaimed property.

All unclaimed property remaining in the hands of a liquidated state trust company shall be subject to the provisions of the Uniform Disposition of Unclaimed Property Act, § 18-28-201 et seq.

History. Acts 1997, No. 940, § 60.

A.C.R.C. Notes. The former Uniform Disposition of Unclaimed Property Act, referred to in this section, was repealed, with the exception of what will be current § 18-28-230, and replaced by the enactment of the Unclaimed Property Act by Acts 1999, No. 850. The Unclaimed Property Act is now codified as § 18-28-201 et seq.

23-51-161. Sale or transfer of property.

Upon the approval of the Bank Commissioner, any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the commissioner and by a majority vote of its board of directors. A certified copy of the minutes of any meeting at which such an action is taken, attested by an officer of the trust company, together with a copy of the contract of sale and transfer, shall be filed with the commissioner. Whenever voluntary liquidation shall be approved by the commissioner or the sale and transfer of the assets of any state trust company shall be approved by the commissioner, the charter of the state trust company shall be canceled, subject, however, to its continued existence, as provided by this chapter and the general law relative to corporations.

History. Acts 1997, No. 940, § 61.

23-51-162. When commissioner may take charge.

The Bank Commissioner may forthwith take possession of the business and property of any state trust company to which this chapter is applicable whenever it shall appear that the state trust company:

- (1) Has violated its charter or any laws applicable thereto;
- (2) Is conducting its business in an unauthorized or unsafe manner;
- (3) Is in an unsafe or unsound condition to transact its business;
- (4) Has an impairment of its capital;
- (5) Is in a hazardous condition;
- (6) Has become otherwise insolvent;
- (7) Has neglected or refused to comply with the terms of a duly issued lawful order of the commissioner;
- (8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the commissioner;
- (9) Is employing officers who have refused to be examined upon oath regarding its affairs; or
- (10) Has made a voluntary assignment of its assets to trustees.

History. Acts 1997, No. 940, § 62.

23-51-163. Directors may act.

Any state trust company may place its assets and business under the control of the Bank Commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the commissioner, and, upon taking possession of the state trust company, the commissioner, or duly appointed agent, shall retain possession thereof until the state trust company shall be authorized by the commissioner to resume business or until the affairs of the state trust company shall be fully liquidated as herein provided. No state trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the commissioner, as herein provided. Whenever any state trust company for any reason shall suspend operations for any length of time, the state trust company shall, immediately upon the suspension of operations, be deemed in the possession of the commissioner and subject to liquidation hereunder.

History. Acts 1997, No. 940, § 63.

23-51-164. Application of Arkansas Banking Code of 1997.

When the Bank Commissioner, or duly appointed agent, shall take possession of any state trust company under § 23-51-162 or § 23-51-163, the commissioner or agent shall proceed with the dissolution and liquidation of the state trust company under the procedures established for the dissolution and liquidation of state banks under the Arkansas Banking Code of 1997.

History. Acts 1997, No. 940, § 64.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas

title.

Banking Code of 1997 referred to in this

23-51-165. Companies authorized to act as fiduciaries.

(a) No company shall act as a fiduciary in this state except:

(1) A state trust company;

(2) A state bank;

(3) An association organized under the laws of this state and authorized to act as a fiduciary pursuant to § 23-37-101 et seq.

(4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C. § 92a;

(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;

(7) An out-of-state bank with a branch in this state established or maintained pursuant to the Arkansas Interstate Banking and Branching Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner pursuant to this chapter;

(8) An out-of-state trust company with a trust office licensed by the commissioner pursuant to this chapter.

(b) No company shall engage in an unauthorized trust activity.

History. Acts 1997, No. 940, § 65.

23-51-166. Activities not requiring a charter, etc.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter or license under this chapter or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(2) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court or the laws of this state;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Real Estate License Law, § 17-42-101 et seq.;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the State Securities Department or the Securities and Exchange Commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the State Insurance Department to the extent that the activity is regulated by the State Insurance Department;

(7) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the State Insurance Department under the Arkansas Prepaid Funeral Benefits Law, § 23-40-101 et seq., or engaging in the lawful business of maintaining a perpetual care cemetery trust pursuant to § 20-17-904 or a permanent maintenance fund for perpetually maintained cemeteries under the Cemetery Act for Perpetually Maintained Cemeteries, § 20-17-1001 et seq.;

(8) Acting as trustee under a voting trust as provided by § 4-26-706 or § 4-27-730;

(9) Engaging in other activities expressly excluded from the application of this chapter by regulations issued by the Bank Commissioner;

(10) Rendering services customarily performed by a public accountant or a certified public accountant in a manner authorized by the Arkansas State Board of Public Accountancy; or

(11) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to § 23-51-182(b):

(A) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(B) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(C) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

History. Acts 1997, No. 940, § 66.

23-51-167. Trust business of state trust institution.

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of the state or foreign country, at an office established and maintained pursuant to this chapter, at a branch or at any other authorized location other than an office or branch.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the Bank Commissioner applicable to the state trust institution. Provided, however, that the commissioner may waive any such prohibition if he or she determines, by order or regulation, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of the state trust institutions.

History. Acts 1997, No. 940, § 67.

23-51-168. Trust business of out-of-state trust institution.

An out-of-state trust institution which establishes or maintains one (1) or more offices in this state under this chapter may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

History. Acts 1997, No. 940, § 68.

23-51-169. Name of trust institution.

A state trust company or out-of-state trust institution may register any name with the Bank Commissioner in connection with establishing a principal office or trust office in this state pursuant to this chapter, except that the commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

History. Acts 1997, No. 940, § 69.

23-51-170. Trust business.

A state trust company or a state bank may:

- (1) Perform any act as a fiduciary;
- (2) Engage in any trust business;
- (3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this chapter; and
- (4) If a state trust company, exercise any other power authorized by § 23-51-104.

History. Acts 1997, No. 940, § 70.

23-51-171. Branches and offices of state trust institutions.

(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this chapter and at a branch.

(b) Notwithstanding the foregoing subsection (a) of this section, a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted to be conducted at such an office by the laws of the host state applicable to trust institutions chartered by the host state.

History. Acts 1997, No. 940, § 71.

23-51-172. State trust company principal office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the Bank Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(d) The change of principal office shall take effect thirty (30) days after the date the commissioner receives the notice pursuant to subsection (c) of this section, unless the commissioner establishes another date or unless prior to that day the commissioner notifies the state trust company that it must establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under § 23-51-106(b) for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

History. Acts 1997, No. 940, § 72.

23-51-173. Trust office.

(a) A state trust institution may establish or acquire and maintain trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Bank Commissioner setting forth the name of the state trust institution, the location of the proposed additional trust office and a general description of the surrounding area, whether the location will be owned or leased, furnish a copy of the resolution adopted by the board authorizing the additional trust office, general description of the activities to be conducted, an estimate of the cost of the trust office and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence business at the additional trust office thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.

(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

History. Acts 1997, No. 940, § 73.

23-51-174. Out-of-state offices.

(a) A state bank, a state trust company, or a savings association chartered under the laws of this state may establish and maintain a new trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Bank Commissioner, which shall set forth the name of the trust institution, the location of the proposed office, and a general description of the surrounding area, whether the location will be owned or leased, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the commissioner.

(b) The notificant may commence business at the additional office thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.

(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the

period of review is extended, the trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

History. Acts 1997, No. 940, § 74.

23-51-175. Trust business at a branch or trust office.

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains a trust office in this state as permitted by this chapter or a branch in this state.

History. Acts 1997, No. 940, § 75.

23-51-176. Establishing an interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish and maintain a new trust office in this state.

(b) An out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-175, in the state where the out-of-state trust institution has its principal office.

History. Acts 1997, No. 940, § 76.

23-51-177. Acquiring an interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may acquire and maintain a trust office in this state.

(b) No out-of-state trust institution may maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where the out-of-state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-175, in the state where the out-of-state trust institution has its principal office.

History. Acts 1997, No. 940, § 77.

23-51-178. Requirement of notice.

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this chapter shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Bank Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of the notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the commissioner.

History. Acts 1997, No. 940, § 78.

23-51-179. Conditions for approval.

(a) No trust office of an out-of-state trust institution may be acquired or established in this state under this chapter unless:

(1) The out-of-state trust institution shall have confirmed in writing to the Bank Commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;

(2) The notificant shall have provided satisfactory evidence to the commissioner of compliance with any applicable requirements of § 4-27-1501 et seq. and the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office;

(3) The commissioner, acting within sixty (60) days after receiving notice under § 23-51-178, shall have certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to subsection (b) of this section have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office sixty (60) days after the date the commissioner receives the notice unless the commissioner specifies another date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company pursuant to § 23-51-106(b) or § 23-51-110, the institution shall have satisfied such conditions and provided to the commissioner satisfactory evidence thereof.

(c) The sixty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the office if the commissioner finds that the notificant lacks sufficient financial resources to

undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

History. Acts 1997, No. 940, § 79.

23-51-180. Additional trust offices.

An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in § 23-51-173.

History. Acts 1997, No. 940, § 80.

23-51-181. Examinations — Periodic reports — Cooperative agreements — Assessment of fees.

(a) To the extent consistent with subsection (c) of this section, the Bank Commissioner may make such examinations of any office established and maintained in this state pursuant to this chapter by an out-of-state trust institution as the commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code of 1997 shall apply to such examinations.

(b) The commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this chapter. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements prescribed by the commissioner under this subsection (b) of this section shall be consistent with the reporting requirements applicable to state trust companies and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this chapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in

this state to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under § 19-11-232.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state, provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state, but provided further that in the case of an out-of-state trust institution, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state trust institution that maintains one (1) or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

History. Acts 1997, No. 940, § 81.

section is codified as chapters 45-50 of this

Publisher's Notes. The Arkansas

title.

Banking Code of 1997 referred to in this

23-51-182. Enforcement.

(a)(1) Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., after notice and opportunity for hearing, the Bank Commissioner may determine:

(A) That an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner; or

(B) That a company is engaged in an unauthorized trust activity

(2) In either event, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the office or the company were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state.

(b) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any action permitted by subsection (a) of this section without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The commissioner shall promptly give notice

to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

History. Acts 1997, No. 940, § 82.

23-51-183. Notice of subsequent merger, closing, etc.

Each out-of-state trust institution that maintains an office in this state pursuant to this chapter, or the home state regulator of such a trust institution, shall give at least thirty (30) days prior written notice or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the Bank Commissioner of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state trust institution or any bank holding company that controls the trust institution, with the result that an application would be required to be filed pursuant to the Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in this state.

History. Acts 1997, No. 940, § 83.

23-51-184. Commissioner shall supervise and examine authorized trust institutions.

Every authorized trust institution shall be under the supervision of the Bank Commissioner. The commissioner shall execute and enforce through the State Bank Department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner is hereby empowered to promulgate such regulations not inconsistent with the provisions of the chapter, as may, in his or her opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under his or her supervision taking into consideration the appropriate interest of the creditors, stockholders, and the public in their relations with the authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions and all regulations and instructions that may be promulgated or issued by the commissioner.

History. Acts 1997, No. 940, § 84.

23-51-185. Examinations — Assessments.

(a) The Bank Commissioner may examine each state trust company every twenty-four (24) months or more often as he or she determines is necessary to safeguard the interests of the public and the safety and soundness of the institution.

(b) Each state-chartered trust company shall pay to the State Bank Department within ten (10) days after notice from the commissioner in January and July of each year an assessment fee to defray the costs of examination and the costs of operations of the department which will be charged in accordance with an assessment fee schedule approved by the commissioner.

(c) The commissioner may accept examinations of a state trust company by a federal or other governmental agency in lieu of an examination under this section or may conduct examinations of a state trust company jointly or concurrently with a federal or other governmental agency.

History. Acts 1997, No. 940, § 85.

23-51-186. Statements of condition and income.

Each state trust company shall periodically file with the Bank Commissioner a copy of its statement of condition and income. The commissioner shall have the power to call for these reports whenever deemed necessary, in order to obtain a full and complete knowledge of the condition of the trust company.

History. Acts 1997, No. 940, § 86.

23-51-187. Confidential records.

(a) The following records of the State Bank Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with department regulations:

- (1) All examination reports filed with the department;
- (2) All records disclosing information obtained from examinations;
- (3) Investigations and reports revealing facts concerning a state trust company or the customers of the organization; and
- (4) All personal financial statements submitted to the department for any purpose.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may, in the Bank Commissioner's discretion, be disclosed as follows:

- (1) Under a validly issued subpoena and, in the interest of justice, the commissioner may waive the privilege created herein and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the

confidential nature of the information so disclosed from public dissemination;

(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the state trust company; and

(3) To federal financial institutions' regulatory agencies and financial institutions' regulatory agencies of other states.

(c) The commissioner shall have the power to promulgate regulations with regard to disclosure of confidential information.

History. Acts 1997, No. 940, § 87.

23-51-188. Administrative orders — Penalties for violation.

(a) In addition to any other powers conferred by this chapter, the Bank Commissioner shall have the power to:

(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this chapter or any lawful regulation issued thereunder;

(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(3) Order any company to cease engaging in an unauthorized trust activity;

(4) Enter any order pursuant to § 23-51-182.

(b) The commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (a)(1) of this section. Provided further, the commissioner may impose a civil money penalty of not more than five hundred dollars (\$500) per day for each day that an authorized trust institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (a)(2) or subdivision (a)(3) of this section.

History. Acts 1997, No. 940, § 88.

23-51-189. Notice and opportunity for hearing.

Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Bank Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the commissioner may take

such an action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

History. Acts 1997, No. 940, § 89.

23-51-190. Subpoena power and examination under oath.

The Bank Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the commissioner.

History. Acts 1997, No. 940, § 90.

23-51-191. Removal of directors, officers, and employees.

Consistent with § 23-51-189, the Bank Commissioner shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any authorized trust institution who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution or who persistently violates the laws of this state or the lawful orders, instructions, and regulations issued by the commissioner.

History. Acts 1997, No. 940, § 91.

23-51-192. Delegation and fiduciary responsibility.

(a) Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management, or administrative function if the person exercises reasonable care, judgment, and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation; and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee, except as provided in § 28-73-807, or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

History. Acts 1997, No. 940, § 92;
2005, No. 1031, § 2.

23-51-193. Affiliates.

(a) Any person acting as a trustee or in any other fiduciary capacity under § 23-51-192 may hire and compensate, as a delegate, an affiliate of the person if:

- (1) Authorized by a trust or fiduciary instrument;
- (2) Authorized by court order;
- (3) Authorized in writing by each affected client; or
- (4) The standards of § 23-51-192 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services.

History. Acts 1997, No. 940, § 93.

23-51-194. Fee determination.

The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this chapter shall be at arm's length and any compensation pursuant to such an arrangement shall be a reasonable amount with respect to the services rendered.

History. Acts 1997, No. 940, § 94.

23-51-195. Disclosure of potential conflicts of interest.

Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after August 1, 1997, which company has any potential or actual conflict of interest which may reasonably be expected to have an impact on the independence or judgment of the trustee or fiduciary, shall disclose appropriate information concerning the actual or potential conflict of interest prior to entering into any written or oral trust or fiduciary agreement with the client or prospective client.

History. Acts 1997, No. 940, § 95.

23-51-196. Interests in trust institutions prohibited.

(a) Neither the Bank Commissioner nor any employee or officer of the State Bank Department who participates in the examination of a trust institution, or who may be called upon to make an official decision or determination affecting the operation of a trust institution, shall be an officer, director, attorney, owner, or holder of stock in any state trust company, or any company which owns or controls a state trust company, or receive, directly or indirectly, any payment or gratuity from any such organizations. A person subject to this section may not borrow money from a state trust company.

(b) A person subject to this section may:

(1) Be a depositor in any trust institution that the department regulates; and

(2) Purchase trust or fiduciary services, other than credit services, under rates and terms generally available to other customers of the trust institution.

History. Acts 1997, No. 940, § 96.

23-51-197. Designation of trustee.

Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of the person.

History. Acts 1997, No. 940, § 97.

23-51-198. Choice of law governing trusts.

Any trust institution that maintains a trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern any written agreement between the trust institution and its client or any instrument under which the trust institution acts for a client.

History. Acts 1997, No. 940, § 98.

23-51-199. Choice of law governing fiduciary investments.

Any trust institution that maintains a trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between the trust institution or its client and any other instrument under which the trust institution acts for a client.

History. Acts 1997, No. 940, § 99.

23-51-200 — 23-51-211. [Repealed.]

Publisher's Notes. These sections, concerning the prudent investor rule, standard of care, diversification, duties at inception of trusteeship, loyalty, impartiality, investment cost, reviewing compliance, delegation of agent, language invoking standard of chapter, application to existing trusts, and uniformity of application and construction, were repealed by Acts 2005, No. 1031, § 4. The sections were derived from the following sources:

- 23-51-200. Acts 1997, No. 940, § 100.
- 23-51-201. Acts 1997, No. 940, § 101.
- 23-51-202. Acts 1997, No. 940, § 102.
- 23-51-203. Acts 1997, No. 940, § 103.
- 23-51-204. Acts 1997, No. 940, § 104.
- 23-51-205. Acts 1997, No. 940, § 105.
- 23-51-206. Acts 1997, No. 940, § 106.
- 23-51-207. Acts 1997, No. 940, § 107.
- 23-51-208. Acts 1997, No. 940, § 108.
- 23-51-209. Acts 1997, No. 940, § 109.
- 23-51-210. Acts 1997, No. 940, § 110.

23-51-211. Acts 1997, No. 940, § 111.

For present law, see the Arkansas Trust Code, § 28-73-101 et seq.

CHAPTER 52

CHECK-CASHERS ACT

SECTION.

23-52-101 — 23-52-117. [Repealed.]

A.C.R.C. Notes. This chapter, concerning the Check-cashers Act, was held unconstitutional in its entirety by the Arkan-

sas Supreme Court in *McGhee v. Ark. State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (2008).

23-52-101 — 23-52-117. [Repealed.]

Publisher's Notes. This chapter, concerning the Check-cashers Act, was repealed by Acts 2011, No. 720, § 2. The chapter was derived from the following sources:

- 23-52-101. Acts 1999, No. 1216, § 1.
- 23-52-102. Acts 1999, No. 1216, § 2; 2001, No. 1553, §§ 37, 38.
- 23-52-103. Acts 1999, No. 1216, § 3.
- 23-52-104. Acts 1999, No. 1216, § 4; 2005, No. 1962, § 106.
- 23-52-105. Acts 1999, No. 1216, § 5.
- 23-52-106. Acts 1999, No. 1216, § 6.
- 23-52-107. Acts 1999, No. 1216, § 7; 2001, No. 1400, § 1; 2001, No. 1553, § 39.
- 23-52-108. Acts 1999, No. 1216, § 8; 2001, No. 1553, § 40.

- 23-52-109. Acts 1999, No. 1216, § 9; 2001, No. 1553, § 41.
- 23-52-110. Acts 1999, No. 1216, § 10; 2001, No. 1553, § 42.
- 23-52-111. Acts 1999, No. 1216, § 11; 2001, No. 1400, § 2; 2001, No. 1553, § 43.
- 23-52-112. Acts 1999, No. 1216, § 12; 2001, No. 1553, § 44.
- 23-52-113. Acts 1999, No. 1216, § 13; 2001, No. 1553, § 45.
- 23-52-114. Acts 1999, No. 1216, § 14; 2001, No. 1553, § 46.
- 23-52-115. Acts 1999, No. 1216, § 15; 2001, No. 1553, § 47.
- 23-52-116. Acts 1999, No. 1216, § 16; 2001, No. 1553, § 48.
- 23-52-117. Acts 1999, No. 1216, § 17; 2001, No. 1553, § 49.

CHAPTER 53

ARKANSAS HOME LOAN PROTECTION ACT

SECTION.

- 23-53-101. Title.
- 23-53-102. Legislative intent.
- 23-53-103. Definitions.
- 23-53-104. Prohibited acts and practices regarding high-cost home loans.

SECTION.

- 23-53-105. Preservation and enforcement of claims and defenses — No subterfuge.
- 23-53-106. Enforcement.

23-53-101. Title.

This chapter shall be known as the “Arkansas Home Loan Protection Act”.

History. Acts 2003, No. 1340, § 1.

23-53-102. Legislative intent.

(a) The General Assembly finds that:

(1) Abusive mortgage lending has become an increasing problem in this state, exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years;

(2) One of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based;

(3) The financing of points and fees in the loans provides immediate income to the originator and encourages lenders to repeatedly refinance home loans;

(4) The lender’s ability to sell loans reduces the incentive to ensure that the homeowner can afford the payments of the loan;

(5) As long as there is sufficient equity in the home, an abusive lender benefits even if the borrower is unable to make the payments and is forced to refinance;

(6) The financing of high points and fees causes the loss of precious equity in each refinancing and often leads to foreclosure;

(7) Abusive lending has threatened the viability of many communities and caused decreases in homeownership;

(8) While the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching lenders who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loan; and

(9) As competition and self-regulation have not eliminated the abusive terms from home-secured loans, the consumer protection provisions of this chapter are necessary to encourage lending at reasonable rates with reasonable terms.

(b) This chapter shall be liberally construed:

(1) To effectuate its purpose of protecting the homes and the equity of individual borrowers; and

(2) As a consumer protection statute for all purposes.

History. Acts 2003, No. 1340, § 2.

23-53-103. Definitions.

As used in this chapter:

(1) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et seq., as it existed on March 1, 2003, as of July 16, 2003;

(2) “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on March 1, 2003, and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System;

(3) “Bona fide loan discount points” means loan discount points knowingly paid by the borrower for the purpose of reducing, and that, in fact, result in a bona fide reduction of the interest rate or time price differential applicable to the loan, provided that the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions;

(4) “Creditor” means any person or entity who participates in the original making or approving of a high-cost home loan;

(5)(A) “High-cost home loan” means a loan, including an open-end credit plan, other than a bridge or construction loan, or a loan made for the purchase of a one-family to four-family residential structure that is secured by a first lien on the structure, in which:

(i) The total loan amount does not exceed one hundred fifty thousand dollars (\$150,000);

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate upon which there is located a structure or structures designed principally for the occupancy of from one (1) to four (4) families which is or will be occupied by the borrower as the borrower’s principal dwelling; and

(v) The terms of the loan meet or exceed one (1) or more of the thresholds as defined in subdivision (8) of this section.

(B) “High-cost home loan” does not include any loan which within sixty (60) days after closing will be insured by, securitized for, or sold to a government agency or government-sponsored enterprise, including the United States Department of Housing and Urban Development, the United States Department of Veterans Affairs, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Arkansas Development Finance Authority, and the United States Department of Agriculture, or that the lender can demonstrate was in good faith intended to be so insured by, securitized for, or sold to the government agency or government-sponsored enterprise;

(6)(A) “Points and fees” means:

(i) All items required to be disclosed under 12 C.F.R. § 226.4(a) and (b), as they existed on March 1, 2003, except interest or the time-price differential unless those items are exempt from disclosure under 12 C.F.R. § 226.4(c), (d), (e), or (f), as they existed on March 1, 2003, except for the items listed under 12 C.F.R. § 226.4(c)(7), as it existed on March 1, 2003, the inclusion or exclusion of which is governed by subdivision (6)(A)(ii) of this section;

(ii) All charges for items listed under 12 C.F.R. § 226.4(c)(7), as it existed on March 1, 2003, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender, but only by the amount the charge exceeds the charge for comparable items provided by a nonaffiliate of the lender at the time the loan is made. Otherwise, the charges are not included within the meaning of the phrase “points and fees”;

(iii) All compensation paid directly or indirectly by the borrower to a mortgage broker not otherwise included in subdivision (6)(A)(i) or subdivision (6)(A)(ii) of this section; and

(iv) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents, but only if the prepayment fees or penalties exceed:

(a) Three percent (3%) of the principal loan amount remaining on the date of the prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;

(b) Two percent (2%) of the principal loan amount remaining on the date of the prepayment, if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or

(c) One percent (1%) of the principal loan amount remaining on the date of the prepayment, if the prepayment is made within the third twelve-month period following the date the loan was made.

(B) “Points and fees” shall not include:

(i) Taxes, filing fees, and recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and

(ii) Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following:

(a) Tax payment services;

(b) Flood certification;

(c) Pest infestation and flood determinations;

(d) Appraisal fees;

(e) Inspections performed before closing;

(f) Credit reports;

(g) Surveys;

(h) Attorney’s fees, if the borrower has the right to select the attorney from an approved list or otherwise;

(i) Notary fees;

(j) Escrow charges, so long as not otherwise included under subdivision (6)(A)(i) of this section;

(k) Title insurance premiums; and

(l) Fire insurance and flood insurance premiums, if the conditions in 12 C.F.R. § 226.4(d)(2), as it existed on March 1, 2003, are met;

(7) “Reverse mortgage transaction” means a nonrecourse loan secured by a borrower’s principal residence that:

(A) Provides cash advances to a borrower based upon the amount of equity in the borrower's residence; and

(B) Requires no payment of principal or interest until the entire loan becomes due and payable;

(8)(A) "Thresholds" means, without regard to whether the loan transaction is or may be a "residential mortgage transaction", as the term "residential mortgage transaction" is defined in 12 C.F.R. § 226.2(a)(24), as it existed on March 1, 2003:

(i) The annual percentage rate of the loan at the time the loan is consummated is such that the loan is a "mortgage" under the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and regulations adopted pursuant thereto by the Board of Governors of the Federal Reserve System, including 12 C.F.R. § 226.32, as it existed on March 1, 2003; or

(ii) The total points and fees payable by the borrower at or before the closing exceed:

(a) Five percent (5%) of the total loan amount if the loan amount is seventy-five thousand dollars (\$75,000) or more;

(b) Six percent (6%) of the total loan amount if the total loan amount is more than twenty thousand dollars (\$20,000), but less than seventy-five thousand dollars (\$75,000); or

(c) Eight percent (8%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or less.

(B) The following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

(i) Up to and including two (2) bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one (1) percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and

(ii) Up to and including one (1) bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two (2) percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and

(9) "Total loan amount" means the same as the term "total loan amount" as used in 12 C.F.R. § 226.32, as it existed on March 1, 2003, and the total loan amount shall be calculated in accordance with the Board of Governors of the Federal Reserve System's Official Staff Commentary thereto.

History. Acts 2003, No. 1340, § 2[3]; 1340 contained two sections designated as 2005, No. 2166, §§ 2, 3.

Publisher's Notes. Acts 2003, No.

"Section 2."

23-53-104. Prohibited acts and practices regarding high-cost home loans.

(a) **INSURANCE AND DEBT CANCELLATION AGREEMENTS.** No creditor making a high-cost home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance or any other life or health insurance or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor.

(b) **FLIPPING.**

(1) No creditor may engage in the unfair act or practice of "flipping" a home loan.

(2) "Flipping" a loan is the making of a high-cost home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. In addition, home loan refinancings shall be presumed to be flippings if:

(A) The primary tangible benefit to the borrower is an interest rate lower than the interest rate or rates on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate; or

(B) The new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or nonprofit organization, that either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or when no payments are required under specified conditions, and when, as a result of the refinancing, the borrower will lose one (1) or more of the benefits of the special mortgage.

(c) **RECOMMENDATION OF DEFAULT.** No creditor shall recommend or encourage default of an existing loan or other debt before and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt.

(d) **CALL PROVISION PROHIBITION.**

(1) No high-cost home loan may contain a provision that permits the creditor in its sole discretion to accelerate the indebtedness.

(2) This subsection does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(e) FEE FOR BALANCE.

(1) No creditor nor any assignee may charge a fee in excess of twenty dollars (\$20.00) for transmitting to any person the balance due to pay off a high-cost home loan or to provide a release upon prepayment.

(2) Payoff balances shall be provided within a reasonable time, but in any event, no more than seven (7) business days after the request.

(f) NO BALLOON PAYMENT.

(1) A high-cost home loan having a term of less than ten (10) years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

(2) This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(g) NO NEGATIVE AMORTIZATION. No high-cost home loan may include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(h) NO INCREASED INTEREST RATE.

(1) No high-cost home loan may contain a provision that increases the interest rate after default.

(2)(A) This subsection does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents.

(B) The change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(i) NO ADVANCE PAYMENTS. No high-cost home loan may include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(j) NO MANDATORY ARBITRATION CLAUSE. No high-cost home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process for any or all claims and defenses the borrower may have against the creditor, broker, or other party involved in the loan transaction.

(k) NO LENDING WITHOUT HOMEOWNERSHIP COUNSELING. A creditor may not make a high-cost home loan without first receiving certification from a third-party counselor approved by the United States Department of Housing and Urban Development, a state housing financing agency, or the regulatory agency that has jurisdiction over the creditor, that the borrower has received counseling on the advisability of the loan transaction.

(l) NO LENDING WITHOUT DUE REGARD TO REPAYMENT ABILITY. A creditor shall not make a high-cost home loan unless the creditor reasonably believes at the time the loan is consummated that one (1) or more of the obligors, when considered individually or collectively, will be able to

make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the dwelling that secures repayment of the loan.

(m) **NO FINANCING PREPAYMENT FEES OR PENALTIES.** In making a high-cost home loan, a lender may not directly or indirectly finance any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced.

(n) **HOME-IMPROVEMENT CONTRACTS.** A creditor may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan unless:

(1) The creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) The instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

(o) **NO MODIFICATION OR DEFERRAL FEES.** A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(p) Subsections (f), (g), and (i) of this section do not apply to reverse mortgage transactions.

History. Acts 2003, No. 1340, § 3[4]; 1340 contained two sections designated as 2005, No. 2166, § 4.

“Section 2.”

Publisher's Notes. Acts 2003, No.

23-53-105. Preservation and enforcement of claims and defenses — No subterfuge.

(a) **LIABILITY OF ASSIGNEES AND OTHER HOLDERS IN HIGH-COST HOME LOANS.**

(1) Notwithstanding any provision of any other law, the remedies provided in this chapter apply to any person or entity who personally participated in the making or approving of the high-cost home loan and who violated the requirements of this chapter.

(2)(A)(i) Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor or broker of the loan.

(ii) However, if the purchaser or assignee demonstrates by a preponderance of the evidence that at the time of the purchase of the home loans or within a reasonable time thereafter the purchaser or assignee exercised reasonable due diligence that was intended to prevent the purchaser or assignee from purchasing or taking assign-

ment of high-cost home loans, then the purchaser or assignee shall have no liability to any person under this chapter.

(B) The liability of any person who purchases or is otherwise assigned a high-cost home loan whose liability is established under this subsection but who did not personally participate in the making or approving of the high-cost home loan, shall be limited to the amount of all remaining indebtedness of the borrower and the total amount paid by the borrower in connection with the transaction.

(C) Any person incurring liability as an assignee is entitled to full recourse against any previous assignee or against any person or entity who personally participated in making or approving the home loan for the full amount of liability sustained by the assignee.

(b) **LIABILITY OF ASSIGNEES IN FORECLOSURE ACTION.** Notwithstanding any provision of any other law, a borrower in default more than sixty (60) days or in foreclosure may assert a violation of this chapter by way of offset:

(1)(A) As an original action, in an individual action only, brought within two (2) years from the date of the occurrence of the violation.

(B) A borrower shall not be barred from asserting a violation in an action to collect the debt which was brought more than one (1) year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in the action except as otherwise provided by law;

(2) As a defense or counterclaim to an action to collect amounts owed; or

(3) To obtain possession of the home secured by the high-cost home loan.

(c) **NO SUBTERFUGE.** It is a violation of this chapter for any person who in bad faith attempts to avoid the application of this chapter by:

(1) Dividing any loan transaction into separate parts for this purpose; or

(2) Any other subterfuge, with the intent of evading the provisions of this chapter.

History. Acts 2003, No. 1340, § 4[5]. 1340 contained two sections designated as **Publisher's Notes.** Acts 2003, No. "Section 2."

23-53-106. Enforcement.

(a)(1) Any violation of this chapter constitutes an unconscionable or deceptive act or practice as defined under § 4-88-101 et seq.

(2)(A) Except as provided in § 23-53-105(a)(2)(A) or (B), any person found by a preponderance of the evidence to have violated this chapter shall be liable to the borrower for the following:

(i)(a) Actual damages, including consequential and incidental damages.

(b) The borrower shall not be required to demonstrate reliance in order to receive actual damages;

(ii) Statutory damages equal to twenty-five percent (25%) of the finance charges agreed to in the home loan agreement plus ten percent (10%) of the amount financed;

(iii) Punitive damages when the violation was malicious or reckless and when otherwise allowable by applicable law; and

(iv) Costs and reasonable attorney's fees.

(B) A borrower may be granted injunctive, declaratory, and other equitable relief as the court deems appropriate in an action to enforce compliance with this chapter.

(b) The intentional violation of this chapter renders the high-cost home loan agreement void, and the creditor shall have no right to collect, receive, or retain any principal, interest, or other charges at all with respect to the loan, and the borrower may recover any payments made under the agreement.

(c) The right of rescission granted under 15 U.S.C. § 1601 et seq., as it existed on March 1, 2003, for violations of that law and all other remedies provided under this chapter shall be available to a borrower by way of recoupment against a party foreclosing on the high-cost home loan or collecting on the loan, at any time during the term of the loan.

(d) The remedies provided in this section are not intended to be the exclusive remedies available to a borrower, nor must the borrower exhaust any administrative remedies provided under this chapter or any other applicable law before proceeding under this section.

(e) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.

(1) A creditor in a home loan who when acting in good faith fails to comply with the provisions of this chapter will not be deemed to have violated this section if the creditor establishes that either:

(A) Within thirty (30) days of the loan closing and before receiving any notice from the borrower of the compliance failure:

(i) The creditor has made appropriate restitution to the borrower; and

(ii) Appropriate adjustments are made to the loan; or

(B) Within sixty (60) days of the loan closing and before receiving any notice from the borrower of the compliance failure, and the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any errors:

(i) The borrower is notified of the compliance failure;

(ii) Appropriate restitution is made to the borrower; and

(iii) Appropriate adjustments are made to the loan.

(2)(A) Examples of bona fide errors include clerical, calculation, computer malfunction and programming, and printing errors.

(B) An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) CUMULATIVE. The remedies provided under this chapter are cumulative and independent of and in addition to any other rights under other laws.

History. Acts 2003, No. 1340, § 5[6]. 1340 contained two sections designated as
Publisher's Notes. Acts 2003, No. "Section 2."

CHAPTER 54

REVERSE MORTGAGE PROTECTION ACT

SECTION.

23-54-101. Title.

23-54-102. Applicability.

23-54-103. Definitions.

23-54-104. Provisions of reverse mort-
gages.

23-54-105. Treatment of loan proceeds.

SECTION.

23-54-106. Loan application — Dis-
closures.

23-54-107. Lien.

23-54-108. Default.

23-54-109. Remedies.

23-54-101. Title.

This chapter shall be known and may be cited as the "Reverse Mortgage Protection Act".

History. Acts 2005, No. 2166, § 1.

23-54-102. Applicability.

This chapter applies to reverse mortgage loans executed on or after January 1, 2006.

History. Acts 2005, No. 2166, § 1.

23-54-103. Definitions.

As used in this chapter, "reverse mortgage" means a nonrecourse loan secured by a borrower's principal residence that:

(1) Provides cash advances to a borrower based upon the amount of equity in the borrower's residence; and

(2) Requires no payment of principal or interest until the entire loan becomes due and payable.

History. Acts 2005, No. 2166, § 1.

23-54-104. Provisions of reverse mortgages.

(a) A reverse mortgage loan:

(1)(A) Shall permit prepayment in whole or in part without penalty at any time during the term of the reverse mortgage loan.

(B) For the purposes of this subdivision (a)(1), "penalty" does not include any fees, payments, or other charges that would have otherwise been due upon the maturity of the reverse mortgage;

(2) May provide for a fixed or adjustable interest rate, or combination thereof, and compound interest;

(3) May provide for a rate of interest that is contingent upon the value of the property at the time of execution of the loan or at maturity, or upon changes in value between closing and maturity; and

(4) May include costs and fees that are customarily charged by the lender or the lender's designee, originator, or servicer, including costs and fees charged:

- (1) Upon execution of the loan;
- (2) On a periodic basis; or
- (3) Upon maturity.

(b) If a reverse mortgage loan provides for periodic advances to a borrower, the advances shall not be reduced in amount or number based upon any adjustment in the interest rate.

(c) The lender shall prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable and that ends when repayment in full is made.

(d) The first page of any mortgage or deed of trust securing a reverse mortgage loan shall contain the following statement in 10-point bold-face type: "This deed of trust secures a reverse mortgage loan."

History. Acts 2005, No. 2166, § 1.

23-54-105. Treatment of loan proceeds.

To the extent that implementation of this section does not conflict with federal law:

(1) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under programs of aid to individuals; and

(2) Undisbursed reverse mortgage funds shall be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the purpose of determining eligibility and benefits under programs of aid to individuals.

History. Acts 2005, No. 2166, § 1.

23-54-106. Loan application — Disclosures.

(a) No reverse mortgage loan application shall be taken by a lender unless the loan applicant has received from the lender the following plain language statement, in conspicuous 16-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan:

"IMPORTANT NOTICE TO REVERSE MORTGAGE LOAN APPLICANT

THE REVERSE MORTGAGE WHICH YOU ARE CONSIDERING:
// DOES

// DOES NOT

REQUIRE THAT YOU PURCHASE AN ANNUITY IN CONNECTION WITH THE REVERSE MORTGAGE TRANSACTION.

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION THAT PROVIDES A MEANS OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME OR THE VALUE OF YOUR HOME AS A SOURCE OF ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.

AS IS TRUE BEFORE ENTERING INTO ANY COMPLEX FINANCIAL ARRANGEMENT, IT IS WISE TO SEEK THE COUNSELING AND ADVICE OF APPROPRIATE PROFESSIONALS SUCH AS ATTORNEYS, FINANCIAL ADVISERS, AND ACCOUNTANTS. COUNSELORS TRAINED ON REVERSE MORTGAGES MAY ALSO BE AVAILABLE. YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY UPON FOR FINANCIAL ADVICE.”

(b) Before giving the prospective borrower the statement described in subsection (a) of this section, the lender shall mark the appropriate alternative concerning annuity requirements.

(c) The lender shall be presumed to have satisfied any disclosure duty imposed by this chapter if the lender provides a disclosure statement in the same form as provided in this chapter.

History. Acts 2005, No. 2166, § 1.

23-54-107. Lien.

(a) A reverse mortgage shall constitute a lien against the subject property to the extent of all advances made under the reverse mortgage and all interest accrued on the advances.

(b) The lien shall have priority over any lien filed after recordation of the reverse mortgage.

History. Acts 2005, No. 2166, § 1.

23-54-108. Default.

(a) The reverse mortgage loan may become due and payable upon the occurrence of any one (1) of the following events:

(1) The home securing the loan is sold or title to the home is otherwise transferred;

(2) All borrowers cease occupying the home as a principal residence, except as provided in subsection (b) of this section;

(3) Any fixed maturity date agreed to by the lender and the borrower occurs; or

(4) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

(b)(1) Temporary absences from the home not exceeding sixty (60) consecutive days shall not cause the mortgage to become due and payable.

(2) Extended absences from the home exceeding sixty (60) consecutive days but less than one (1) year shall not cause the mortgage to become due and payable if the borrower has taken prior action which secures and protects the home in a manner satisfactory to the lender.

(c)(1) The lender's right to collect reverse mortgage loan proceeds shall be subject to the applicable statute of limitations for written loan contracts.

(2) Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement.

History. Acts 2005, No. 2166, § 1.

23-54-109. Remedies.

(a) A lender who fails to make loan advances as required in the loan documents shall pay the borrower triple the amount wrongfully withheld plus interest at the maximum legal rate.

(b) No arrangement, transfer, or lien subject to this chapter shall be invalidated solely because of the failure of a lender to comply with any provision of this chapter.

(c) Nothing in this section shall preclude the application of any other civil remedy provided by law.

History. Acts 2005, No. 2166, § 1.

CHAPTER 55

UNIFORM MONEY SERVICES ACT.

ARTICLE.

1. GENERAL PROVISIONS
2. MONEY TRANSMISSION LICENSES
3. [RESERVED]
4. CURRENCY EXCHANGE LICENSES
5. AUTHORIZED DELEGATES
6. EXAMINATIONS — REPORTS — RECORDS
7. PERMISSIBLE INVESTMENTS
8. ENFORCEMENT
9. ADMINISTRATIVE PROCEDURES
10. MISCELLANEOUS PROVISIONS

A.C.R.C. Notes. Amendments to this chapter by Acts 2009, No. 486, and Acts 2011, No. 733, were not derived from an official revision of the Uniform Money

Services Act by the National Conference of Commissioners on Uniform State Laws.

Effective Dates. Acts 2007, No. 1595, § 1: Jan. 1, 2008.

ARTICLE 1

GENERAL PROVISIONS

SECTION.

23-55-101. Short title.

23-55-102. Definitions.

SECTION.

23-55-103. Exclusions.

23-55-104. Administration and rules.

23-55-101. Short title.

This chapter may be cited as the Uniform Money Services Act.

History. Acts 2007, No. 1595, § 1.

23-55-102. Definitions.

In this chapter:

(1) “Applicant” means a person that files an application for a license under this chapter.

(2) “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee.

(3) “Bank” means an institution organized under federal or state law which:

(A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than \$100,000, and does not engage in the business of making commercial loans.

(4) “Commissioner” means the Securities Commissioner.

(5) “Control” means:

(A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) “Currency exchange” means receipt of revenues from the exchange of money of one government for money of another government.

(7) “Executive officer” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) “Licensee” means a person licensed under this chapter.

(9) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(10) “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) “Money services” means money transmission or currency exchange.

(12)(A) “Money transmission” means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission.

(B) “Money transmission” does not include providing delivery services such as courier or package delivery services or acting as a mere conduit for the transmission of data.

(13) “Outstanding,” with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(14) “Payment instrument” means a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(16) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Responsible individual” means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(18) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19) “Stored value” means monetary value that is evidenced by an electronic record.

(20) “Unsafe or unsound practice” means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee’s assets, or otherwise materially prejudices the interests of its customers.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, §§ 1 – 3; 2011, No. 733, § 1.

A.C.R.C. Notes. Section 102 of the Uniform Money Services Act (Amend. 2004) differs substantially as adopted in Arkansas.

Amendments. The 2009 amendment inserted “or approved” in (8); deleted “check cashing” following “transmission” in (11); inserted (12)(B), redesignated the remaining text accordingly, and deleted the last sentence of (12)(A), which read: “The term does not include the provision

solely of delivery, online or telecommunications services, or network access”; and made related changes.

The 2011 amendment deleted “or approved” following “licensed” in (8).

23-55-103. Exclusions.

This chapter does not apply to:

- (1) the United States or a department, agency, or instrumentality thereof;
- (2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;
- (3) a state, county, city, or any other governmental agency or governmental subdivision of a State;
- (4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. §§ 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. §§ 611-633 (1994 & Supp. V 1999) under the laws of a State or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;
- (5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;
- (6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. §§ 1-25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;
- (7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;
- (8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;
- (9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers; similar funds transfers;
- (10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer; or
- (11) a credit union regulated and insured by the National Credit Union Administration.

History. Acts 2007, No. 1595, § 1.

A.C.R.C. Notes. Section 103 of the Uni-

form Money Services Act (Amend. 2004) does not include subdivision (11).

23-55-104. Administration and rules.

- (a) The Securities Commissioner shall administer this chapter.
- (b) The commissioner may:
 - (1) Make, amend, and rescind any rules, forms, and orders that the commissioner deems necessary or appropriate to carry out this chapter, including without limitation rules and forms governing applications and reports; and
 - (2) Define any terms, whether or not used in this chapter, if consistent with this chapter.
- (c) A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is:
 - (1) Necessary or appropriate in the public interest or for the protection of consumers; and
 - (2) Consistent with the purposes fairly intended by the policy and provisions of this chapter.
- (d) All rules and forms of the commissioner shall be published.

History. Acts 2009, No. 486, § 4.

ARTICLE 2

MONEY TRANSMISSION LICENSES

SECTION.	SECTION.
23-55-201. License required.	23-55-205. Issuance of license.
23-55-202. Application for license.	23-55-206. Renewal of license.
23-55-203. [Repealed.]	23-55-207. Net worth.
23-55-204. Security.	

23-55-201. License required.

- (a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:
- (1) is licensed under this article;
 - (2) is an authorized delegate of a person licensed under this article;
- or
- (3) is excluded under § 23-55-103.
- (b) A license under this article is not transferable or assignable.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 5; 2011, No. 733, § 2.

Amendments. The 2009 amendment inserted (a)(4) and made related changes. The 2011 amendment deleted “or approved to engage in money transmission under § 23-55-203” at the end of (a)(1); and deleted (a)(3) and redesignated (a)(4) as present (a)(3).

23-55-202. Application for license.

(a) In this section, “material litigation” means litigation that according to generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.

(b) A person applying for a license under this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant’s proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant’s payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the commissioner reasonably requires with respect to the applicant.

(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(1) the date of the applicant’s incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next

preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of, the applicant has been involved in the 10-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999);

(9) evidence of the applicant's registration or qualification to do business in this state;

(10) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999); or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(11) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(12) any other information the commissioner reasonably requires with respect to the applicant.

(d) A nonrefundable application fee of \$1,500 and a license fee of \$750 must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

(e) The commissioner may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

(f) The application shall be accompanied by the surety bond required by § 23-55-204.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, §§ 6, 7.

Amendments. The 2009 amendment

inserted (c)(9) and redesignated the subsequent subdivisions accordingly; and added (f).

23-55-203. [Repealed.]

Publisher's Notes. This section, concerning approval to engage in money transmission when licensed in another

state, was repealed by Acts 2011, No. 733, § 3. The section was derived from Acts 2007, No. 1595, § 1; 2009, No. 486, § 8.

23-55-204. Security.

(a) Except as otherwise provided in subsection (b), a surety bond in the amount of \$50,000 plus \$10,000 per location in this State where the applicant and its authorized delegates engage in money transmission or provide other money services, with the maximum required amount of the surety bond of \$300,000, must accompany an application for a license to engage in money services.

(b) The surety bond must be in a form satisfactory to the Securities Commissioner and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the commissioner may maintain an action on behalf of the claimant.

(d) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this State is reduced.

(e) [Repealed.]

(f) The commissioner may increase the amount of security required to a maximum of \$1,000,000 if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 9; 2011, No. 733, § 4.

Amendments. The 2009 amendment, in (a), deleted "letter of credit, or other similar security acceptable to the commissioner" following "surety bond" and inserted "or approval to engage in money services"; substituted "The surety bond" for "Security" in (b); repealed (e), which read: "In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form

prescribed by the commissioner"; and made a related change.

The 2011 amendment, in (a), substituted "in this State where the applicant and its authorized delegates engage in money transmission or provide other money services, with the maximum required amount of the surety bond of \$300,000" for "not exceeding a total addition of \$250,000" and deleted "or approval" following "License"; and deleted the last sentence in (d).

23-55-205. Issuance of license.

(a) When an application is filed under this article, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this subchapter if the

commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with §§ 23-55-202, 23-55-204, and 23-55-207; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

(b) When an application for an original license under this article is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this article, to take effect as of the first business day after expiration of the 120-day period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied by the commissioner under this article may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing before the commissioner.

(e) A license issued under this article expires annually at the close of business on December 31 unless the license is:

(1) renewed according to this article;

(2) surrendered by the license holder;

(3) suspended; or

(4) revoked by the commissioner.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 10; 2011, No. 733, § 5. The 2011 amendment added (e).

Amendments. The 2009 amendment inserted “before the commissioner” in (d).

23-55-206. Renewal of license.

(a) A licensee under this article shall pay an annual renewal fee of \$750 no later than December 1 for the succeeding calendar year or, if December 1 is not a business day, on the next business day.

(b) A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the commissioner. The renewal report must state or contain:

(1) the number and monetary amount of payment instruments and stored-value sold by the licensee in this State which have not been included in a renewal report and the monetary amount of payment instruments and stored value currently outstanding;

(2) a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner on any required report;

(3) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in §§ 23-55-701 and 23-55-702; and

(4) proof that the licensee continues to maintain adequate security as required by § 23-55-204.

(c) A licensee that does not comply with subsections (a) and (b) by December 1 shall pay a late fee of \$250 if the complete renewal application is received before the expiration of the license.

(d) The commissioner for good cause may grant an extension of the renewal date.

History. Acts 2007, No. 1595, § 1; 2011, No. 733, § 6.

Amendments. The 2011 amendment substituted "December 1 for the succeeding calendar year or, if December 1" for "30 days before the anniversary of the

issuance of the license or, if the last day" in (a); deleted "and in a medium" following "form" in the introductory paragraph of (b); deleted (b)(1) and (b)(6) and redesignated the remaining subdivisions accordingly; and rewrote (c).

23-55-207. Net worth.

A licensee under this article shall maintain a net worth of at least \$250,000 determined in accordance with generally accepted accounting principles.

History. Acts 2007, No. 1595, § 1.

ARTICLE 3

[RESERVED]

A.C.R.C. Notes. Article 3 of the Uniform Money Services Act (Amend. 2004), concerning check cashing licenses, was not adopted in Arkansas.

ARTICLE 4

CURRENCY EXCHANGE LICENSES

SECTION.

23-55-401. License required.

23-55-402. Application for license.

SECTION.

23-55-403. Issuance of license.

23-55-404. Renewal of license.

23-55-401. License required.

(a) A person may not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person:

- (1) is licensed under this article;
- (2) is licensed for money transmission under § 23-55-201 et seq.; or
- (3) is an authorized delegate of a person licensed under § 23-55-201 et seq.

(b) A license under this article is not transferable or assignable.

History. Acts 2007, No. 1595, § 1; deleted “or approved to engage in money transmission under § 23-55-203” at the 2011, No. 733, § 7.

Amendments. The 2011 amendment, end of (a)(2); and deleted (a)(4).

23-55-402. Application for license.

(a) A person applying for a license under this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in currency exchange; and

(5) other information the commissioner reasonably requires with respect to the applicant, but not more than the commissioner may require under § 23-55-201 et seq.

(b) A nonrefundable application fee of \$1,500 and a license fee of \$750 must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

History. Acts 2007, No. 1595, § 1; deleted “or check cashing” following “currency exchange” in (3); and deleted “check cashing and” following “engage in” in (4). 2009, No. 486, § 11.

Amendments. The 2009 amendment

23-55-403. Issuance of license.

(a) When an application for a license is made under this article, the commissioner shall investigate the applicant’s financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this article if

the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with § 23-55-402; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(b) When an application for an original license under this article is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this article, to take effect as of the first business day after expiration of the period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied a license by the commissioner under this article may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing.

(e) A license issued under this chapter expires at the close of business on December 31 of the second calendar year unless the license is:

(1) renewed according to this chapter;

(2) surrendered by the license holder;

(3) suspended; or

(4) revoked by the commissioner.

History. Acts 2007, No. 1595, § 1; The 2011 amendment added (e).
2009, No. 164, § 13; 2011, No. 733, § 8.

Amendments. The 2009 amendment inserted "for a license is made" in (a).

23-55-404. Renewal of license.

(a) A licensee under this article shall pay a biennial renewal fee of \$750 no later than December 1 for the succeeding biennium or, if December 1 is not a business day, on the next business day.

(b) A licensee under this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the commissioner on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange, including limited stations and mobile locations.

(c) A licensee may renew a license after the time specified in subsection (a) before the expiration of the license by:

- (1) paying \$750;
- (2) complying with the requirements in subsection (b); and
- (3) paying a late fee of \$250 so long as the complete renewal application is received.

(d) The commissioner for good cause may grant an extension of the renewal date.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 12; 2011, No. 733, § 9.

Amendments. The 2009 amendment deleted “or check cashing” following “currency exchange” in (b)(2). if December 1” for “30 days before each biennial anniversary of the issuance of the license or, if the last day” in (a); and rewrote (c).

The 2011 amendment substituted “December 1 for the succeeding biennium or,

ARTICLE 5
AUTHORIZED DELEGATES

SECTION.	SECTION.
23-55-501. Relationship between licensee and authorized delegate.	23-55-502. Unauthorized activities.

23-55-501. Relationship between licensee and authorized delegate.

(a) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this chapter.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) If a license is suspended or revoked or a licensee does not renew its license, the commissioner shall notify all authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the

authorized delegate is authorized to engage under § 23-55-201 et seq. or § 23-55-401 et seq. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

(f) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

History. Acts 2007, No. 1595, § 1.

23-55-502. Unauthorized activities.

A person may not provide money services on behalf of a person not licensed under this chapter. A person that engages in that activity provides money services to the same extent as if the person were a licensee.

History. Acts 2007, No. 1595, § 1.

ARTICLE 6

EXAMINATIONS — REPORTS — RECORDS

SECTION.

- 23-55-601. Authority to conduct examinations and investigations.
- 23-55-602. Cooperation.
- 23-55-603. Reports.
- 23-55-604. Change of control.

SECTION.

- 23-55-605. Records.
- 23-55-606. Money laundering reports.
- 23-55-607. Confidentiality.
- 23-55-608. Disclosure requirements.

23-55-601. Authority to conduct examinations and investigations.

(a) The Securities Commissioner or the commissioner's designee may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee.

(b) The commissioner may examine a licensee or its authorized delegate, at any time, without notice, if the commissioner has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued under this chapter.

(c)(1) The licensee, applicant, or person subject to licensing under this chapter shall pay a fee for each examination, not to exceed one hundred fifty dollars (\$150) per examiner for each day or for part of a day during which the examiner is absent from the office of the commissioner for the purpose of conducting the examination.

(2) In addition to the fee prescribed under subdivision (c)(1) of this section, the licensee, applicant, or person subject to licensing under this chapter may be required to pay the actual hotel and traveling expenses of each examiner traveling to and from the office of the commissioner while the examiner is conducting the examination.

(d) Information obtained during an examination under this chapter may be disclosed only as provided in § 23-55-607.

(e) The commissioner may:

(1) Make any investigations within or outside of this state that he or she deems necessary to determine whether a person has violated or is about to violate this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter;

(2) Require or permit a person to file a sworn, written statement or submit any other form of evidence concerning the matter to be investigated; and

(3) Publish information concerning a violation of this chapter or a rule or order issued under this chapter.

(f) For the purpose of an investigation or proceeding under this chapter, the commissioner or the commissioner's designee may:

(1) Administer oaths and affirmations;

(2) Subpoena and compel the attendance of witnesses;

(3) Take evidence; and

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner deems relevant or material to the inquiry.

(g)(1) In case of contumacy by or the refusal to obey a subpoena issued to a person, the Pulaski County Circuit Court upon application by the commissioner or the commissioner's designee to testify or produce documentary or other evidence concerning the matter under investigation or in question.

(2) Failure to obey the order of the court may be punished by the court as a contempt of court.

(h)(1) A person shall not refuse to appear, testify, or produce evidence before the commissioner or the commissioner's designee on the ground that the testimony or evidence may tend to incriminate the person or subject the person to a penalty or forfeiture.

(2)(A) After claiming a privilege against self-incrimination, an individual shall not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the individual is compelled to testify or produce evidence, documentary or otherwise.

(B) However, an individual is not exempt from prosecution and punishment for perjury or contempt committed while testifying or producing evidence, documentary or otherwise.

(i)(1) To aid an examination or investigation under this chapter, the commissioner or the commissioner's designee may at any time examine:

(A) The business of a licensee, an authorized delegate of a licensee, or any other person engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter; and

(B) Wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of a licensee, an authorized delegate of a licensee, or any other person engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter.

(2) The commissioner or the commissioner's designee shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults to conduct the examination or investigation under this section.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 13; 2011, No. 733, § 10.

Amendments. The 2009 amendment substituted "Securities Commissioner or the commissioner's designee" for "commissioner" in (a); rewrote (c), which read: "If the commissioner concludes that an on-

site examination is necessary under subsection (a), the licensee shall pay the reasonable cost of the examination; and added (e) through (i).

The 2011 amendment, in (c)(2), substituted "may be required to" for "shall" and inserted "actual."

23-55-602. Cooperation.

The Securities Commissioner may consult and cooperate with other state money services regulators and agencies of the United States Government in enforcing and administering this chapter. They may jointly pursue examinations and take other official action that they are otherwise empowered to take.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 14.

Amendments. The 2009 amendment

inserted "and agencies of the United States Government" and made a minor stylistic change.

23-55-603. Reports.

(a) A licensee shall file with the commissioner within 15 business days any material changes in information provided in a licensee's application as prescribed by the commissioner.

(b) A licensee shall file with the commissioner within 45 days after the end of each fiscal quarter a current list of all authorized delegates, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A money transmission licensee shall file with the commissioner within 90 days after the end of the money transmission licensee's fiscal year a copy of the money transmission licensee's audited financial statement from the most recently completed fiscal year or, if the money transmission licensee is a wholly owned subsidiary of another corporation, the consolidated audited financial statement of the parent corporation from the most recently completed fiscal year or the money transmission licensee's consolidated audited annual financial statement from the most recently completed fiscal year.

(d) A licensee shall file a report with the commissioner within 3 business days after the licensee has reason to know of the occurrence of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. §§ 101-110 (1994 & Supp. V 1999), for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of judicial or administrative proceedings for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a state or country that the licensee engages in business or is licensed;

(4) the cancellation or impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director, or person in control of the licensee, for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

History. Acts 2007, No. 1595, § 1; 2011, No. 733, §§ 11, 12.

Amendments. The 2011 amendment rewrote (c); and added (d).

23-55-604. Change of control.

(a) A licensee shall:

(1) give the commissioner notice in a record of a proposed change of control within 15 days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of \$1,000 with the notice.

(b) After review of a request for approval under subsection (a), the commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(d) When an application for a change of control under this article is complete, the commissioner shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within 120 days after that date; or

(2) if the request is not approved or denied within 120 days after that date:

(A) the request is deemed approved; and

(B) the commissioner shall permit the change of control under this section, to take effect as of the first business day after expiration of the period.

(e) The commissioner, by rule or order, may exempt a person from any of the requirements of subsection (a)(2) and (3) if it is in the public interest to do so.

(f) Subsection (a) does not apply to a public offering of securities.

(g) Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (c).

History. Acts 2007, No. 1595, § 1; substituted “rule or order” for “rule of order” in (e).
2009, No. 164, § 14.

Amendments. The 2009 amendment

23-55-605. Records.

(a) A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

(1) a record of each payment instrument or stored-value obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value obligations;

(5) records of each payment instrument and stored-value obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee’s authorized delegates; and

(7) any other records the commissioner reasonably requires by rule.

(b) The items specified in subsection (a) may be maintained photographically, electronically, or in any other form of record allowed by the commissioner.

(c) Records may be maintained outside this State if they are made accessible to the commissioner on seven business-days’ notice that is sent in a record.

(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the commissioner pursuant to § 23-55-601.

History. Acts 2007, No. 1595, § 1; rewrote (b), which read: “The items specified in subsection (a) may be maintained in any form of record.”
2009, No. 486, § 15.

Amendments. The 2009 amendment

23-55-606. Money laundering reports.

(a) A licensee and an authorized delegate shall file with the commissioner all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in

31 U.S.C. § 5311 (1994), 31 C.F.R. § 103 (2000) and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the requirements of subsection (a), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the commissioner.

History. Acts 2007, No. 1595, § 1.

23-55-607. Confidentiality.

(a) Unless otherwise specified in this section, all information filed with the commissioner shall be available for public inspection under rules promulgated by the commissioner consistent with state and federal law governing the disclosure of public information.

(b) Except for reasonably segregable portions of information and records that by law would routinely be made available to a party other than an agency in litigation with the commissioner, the commissioner shall not publish or make available:

(1) Information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an investigation, examination, or inspection of the books and records of any person;

(2) Interagency or intra-agency memoranda or letters, including without limitation:

(A) Records that reflect discussions between or consideration by the commissioner or members of his or her staff, or both, of any action taken or proposed to be taken by the commissioner or by any members of his or her staff; and

(B) Reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an:

(i) Inspection of the books or records of a person whose affairs are regulated by the commissioner; or

(ii) Examination, investigation, or litigation conducted by or on behalf of the commissioner;

(3) Personnel files, medical files, and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy, including without limitation:

(A) Information concerning all employees of the State Securities Department and all persons subject to regulation by the department; and

(B) Personal information reported to the commissioner under the department's rules concerning registration about employees of applicants, licensees, or their agents;

(4)(A) Investigatory records compiled for law enforcement purposes to the extent that production of the records would:

- (i) Interfere with enforcement proceedings;
- (ii) Deprive a person of a right to a fair trial or an impartial adjudication; or
- (iii) Disclose the identity of a confidential source.

(B) The commissioner may also withhold investigatory records that would:

- (i) Constitute an unwarranted invasion of personal privacy;
- (ii) Disclose investigative techniques and procedures; or
- (iii) Endanger the life or physical safety of law enforcement personnel.

(C) As used in this section, "investigatory records" includes:

- (i) All documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violation by any person of any provision of the statutes or rules administered by the commissioner; and

- (ii) All written communications from or to any person confidentially complaining or otherwise furnishing information about a possible violation, as well as all correspondence and memoranda in connection with the confidential complaint or information;

(5) Information contained in or related to examinations, operating reports, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, check issuers, money transmitters, money services providers, or money service businesses;

(6)(A) Financial records of any applicant, licensee, or the agent of an applicant or licensee obtained during or as a result of an examination by the commissioner.

(B) However, when a record under this article is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the applicant, licensee, or agent upon filing.

(C) Information under subdivision (b)(6)(B) of this section bound separately and marked "confidential" shall be deemed nonpublic until ten (10) days after the commissioner has given the applicant, licensee, or agent notice that an order will be entered deeming the material public information.

(D) An applicant, licensee, or agent may seek an injunction from the Pulaski County Circuit Court ordering the commissioner to withhold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner under subdivision (b)(6)(C) of this section is appealed under applicable law;

- (7) Trade secrets obtained from any person; or
- (8) Any other records that are required to be closed to the public and are not deemed open to public inspection under other law.
- (c) The commissioner may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the commissioner finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the commissioner of its intent to release the information.
- (d) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

History. Acts 2007, No. 1595, § 1. differs substantially as adopted in Arkansas.
A.C.R.C. Notes. Section 607 of the Uniform Money Services Act (Amend. 2004)

23-55-608. Disclosure requirements.

- (a) A licensee shall provide its name and mailing address or telephone number to the purchaser in connection with each money transmission or currency exchange transaction conducted by the licensee directly or through an authorized delegate.
- (b) An authorized delegate shall display prominently in a form and in a medium prescribed by the Securities Commissioner a notice that states or contains the following information:
 - (1) The name, mailing address, and telephone number of the authorized delegate;
 - (2) For each licensee of the authorized delegate:
 - (A) A statement that the authorized delegate is an agent conducting business on behalf of the licensee under this chapter; and
 - (B) The name, mailing address, and telephone number of the licensee; and
 - (3) A statement:
 - (A) Directing consumers with complaints to contact the State Securities Department; and
 - (B) Containing the current mailing address and telephone number of the department.

History. Acts 2009, No. 486, § 16.

ARTICLE 7

PERMISSIBLE INVESTMENTS

SECTION. 23-55-701. Maintenance of permissible investments.	SECTION. 23-55-702. Types of permissible investments.
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23-55-701. Maintenance of permissible investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold in all states and money transmitted from all states by the licensee.

(b) The commissioner, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee.

History. Acts 2007, No. 1595, § 1.

23-55-702. Types of permissible investments.

(a) Except to the extent otherwise limited by the commissioner pursuant to § 23-55-701, the following investments are permissible under § 23-55-701:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813 (1994 & Supp. V 1999);

(2) banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to investments specified in paragraphs (1) through (4).

(b) The following investments are permissible under § 23-55-701, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the commissioner designates, to the extent specified by the commissioner.

(c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with § 23-55-701.

ARTICLE 8**ENFORCEMENT****SECTION.**

- 23-55-801. Suspension and revocation.
23-55-802. Suspension and revocation of
authorized delegates.
23-55-803. Orders to cease and desist.
23-55-804. Consent orders.

SECTION.

- 23-55-805. Civil penalties.
23-55-806. Criminal penalties.
23-55-807. Unlicensed persons.
23-55-808. Receivership.

23-55-801. Suspension and revocation.

(a) The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this chapter or a rule adopted or an order issued under this chapter;

(2) the licensee does not cooperate with an examination or investigation by the commissioner;

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;

(8) the licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter; or

(9) the licensee is the subject of an order, including a denial, suspension, or revocation, by this or any other state or federal authority that was entered against the person within the past 5 years, including without limitation the money services industry.

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

History. Acts 2007, No. 1595, § 1;
2011, No. 733, § 13.

Amendments. The 2011 amendment
added (a)(9).

23-55-802. Suspension and revocation of authorized delegates.

(a) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:

(1) the authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;

(2) the authorized delegate did not cooperate with an examination or investigation by the commissioner;

(3) the authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

History. Acts 2007, No. 1595, § 1.

23-55-803. Orders to cease and desist.

(a) If the Securities Commissioner determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee, authorized delegate, or any other person is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue a summary order requiring the licensee, authorized delegate, or any other person to cease and desist from the violation. The order becomes effective upon service of it upon the licensee, authorized delegate, or any other person.

(b) The commissioner may issue a summary order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the commissioner.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to § 23-55-901 or § 23-55-902 and the entry of a subsequent order to affirm, modify, or vacate the order by the commissioner.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 17.

A.C.R.C. Notes. Section 803(d) and (e) of the Uniform Money Services Act (Amend. 2004) were not adopted in Arkansas.

Amendments. The 2009 amendment inserted “or any other person” in three

places in (a); substituted “a summary order” for “an order” in (a) and (b); substituted “§ 23-55-901 or § 23-55-902 and the entry of a subsequent order to affirm, modify, or vacate the order by the commissioner” for “§ 23-55-801 or § 23-55-802” in (c); and made related and minor stylistic changes.

23-55-804. Consent orders.

The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person’s authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

History. Acts 2007, No. 1595, § 1.

23-55-805. Civil penalties.

The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed \$1,000 per day for each day the violation is outstanding, plus this State’s costs and expenses for the investigation and prosecution of the matter, including reasonable attorney’s fees.

History. Acts 2007, No. 1595, § 1.

23-55-806. Criminal penalties.

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter, that intentionally makes a false entry or omits a material entry in such a record, or violates any rule promulgated or order issued hereunder is guilty of a Class B felony.

(b) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives more than \$500 in compensation within a 30-day period from this activity is guilty of a Class B felony.

(c) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives no more than \$500 in compensation within a 30-day period from this activity is guilty of a Class A misdemeanor.

History. Acts 2007, No. 1595, § 1.

23-55-807. Unlicensed persons.

(a)(1) [Repealed.]

(2) If as a result of an investigation or examination the Securities Commissioner finds that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, the commissioner may summarily issue:

(A) A cease and desist order under § 23-55-803; or

(B) An order to prohibit the person from continuing to engage in providing money services.

(b) [Repealed.]

(c)(1) An order to cease and desist becomes effective upon service of it upon the person.

(2) A hearing shall be held on the written request of the person aggrieved by the order to cease and desist if the request is received by the commissioner within thirty (30) days of the date of the entry of the order to cease and desist or if ordered by the commissioner.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to §§ 23-55-901 and 23-55-902 and the entry of a subsequent order by the commissioner to affirm, modify, or vacate the order.

(e) The commissioner may apply to the Pulaski County Circuit Court to:

(1) Temporarily or permanently enjoin an act or practice that violates this chapter or a rule or order under this chapter; or

(2) Enforce compliance with this chapter or a rule or order under this chapter.

History. Acts 2007, No. 1595, § 1; 2009, No. 486, § 18.

A.C.R.C. Notes. Section 807(e) and (f) of the Uniform Money Services Act (Amend. 2004) were not adopted in Arkansas.

Amendments. The 2009 amendment

repealed (a), redesignated it as (a)(1), and inserted (a)(2); repealed (b); inserted (c)(2) and redesignated the remaining text accordingly; inserted “and the entry of a subsequent order by the commissioner to affirm, modify, or vacate the order” in (d); and added (e).

23-55-808. Receivership.

(a)(1) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner, or the Attorney General representing the commissioner, may apply to the Pulaski County Circuit Court or to the circuit court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in such amount as may appear necessary to protect claimants of the licensee.

(2) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives

of the licensee or such other action as may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise such powers and duties as may be necessary and consistent with the laws of this state applicable to the appointment of receivers.

(3) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

History. Acts 2007, No. 1595, § 1.
A.C.R.C. Notes. This section is not

derived from the Uniform Money Services Act (Amend. 2004).

ARTICLE 9

ADMINISTRATIVE PROCEDURES

SECTION.
23-55-901. Administrative proceedings.
23-55-902. Hearings.

23-55-901. Administrative proceedings.

All administrative proceedings under this chapter must be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2007, No. 1595, § 1.

23-55-902. Hearings.

- (a) Except as otherwise provided in §§ 23-55-803 and 23-55-807, the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard.
- (b) The commissioner shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

History. Acts 2007, No. 1595, § 1;
2011, No. 733, § 14.

subdivided part of the paragraph and deleted “23-55-206(c), 23-55-404(c)” preceding “23-55-803” in (a).

Amendments. The 2011 amendment

ARTICLE 10

MISCELLANEOUS PROVISIONS

SECTION.
23-55-1001. Uniformity of application
and construction.
23-55-1002. Severability clause.
23-55-1003. Effective date.

SECTION.
23-55-1004. [Reserved.]
23-55-1005. Savings and transitional provisions.
23-55-1006. Transition year.

23-55-1001. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

History. Acts 2007, No. 1595, § 1. Acts 2007, No. 1595, codified as § 23-55-101 et seq.
A.C.R.C. Notes. Meaning of “this act”.

23-55-1002. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Acts 2007, No. 1595, § 1.

23-55-1003. Effective date.

This chapter takes effect January 1, 2008.

History. Acts 2007, No. 1595, § 1.

23-55-1004. [Reserved.]

History. Acts 2007, No. 1595, § 1. 2004), a repealing provision, was not adopted in Arkansas.
A.C.R.C. Notes. Section 1004 of the Uniform Money Services Act (Amend.

23-55-1005. Savings and transitional provisions.

(a) A license issued under the Sale of Checks Act, § 23-41-101 et seq. [repealed], that is in effect immediately before January 1, 2008, remains in force as a license under the Sale of Checks Act, § 23-41-101 et seq. [repealed], until the license’s expiration date. Thereafter, the licensee is deemed to have applied for and have received a license under this chapter and must comply with the renewal requirements set forth in this chapter.

(b) This chapter applies to the provision of money services on or after January 1, 2008. This chapter does not apply to money transmission provided by a licensee who was licensed to provide money transmission under the Sale of Checks Act, § 23-41-101 et seq. [repealed], and whose license remains in force under this section.

History. Acts 2007, No. 1595, §§ 1, 2. 2004) differs substantially as adopted in Arkansas.
A.C.R.C. Notes. Section 1005(b) of the Uniform Money Services Act (Amend.

23-55-1006. Transition year.

(a) Effective January 1, 2012:

(1) a license for a money transmission issued or renewed under this chapter shall expire on December 31 of each year unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner; and

(2) a license for a currency exchange issued or renewed under this chapter shall expire on December 31 every 2 years unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner.

(b) A license in effect on December 31, 2011, that is scheduled to expire during the 2012 calendar year shall continue until the stated expiration date of the license unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner.

(c) For the transition year 2012:

(1) a license issued or renewed after July 1, 2012, shall be charged $\frac{1}{2}$ of the license or renewal fees prescribed in §§ 23-55-202(d) and 23-55-206(a) and $\frac{1}{4}$ of the license or renewal fees prescribed by §§ 23-55-402(b) and 23-55-404(a); and

(2) a license issued or renewed during calendar year 2012 shall terminate on December 31, 2012.

History. Acts 2011, No. 733, § 15.

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